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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 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, 2020

☐ **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 001-38709

Osmotica Pharmaceuticals plc

(Exact name of registrant as specified in its charter)

Ireland	**Not Applicable**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

400 Crossing Boulevard
Bridgewater, NJ 08807
(Address of principal executive offices)
(Zip Code)

(908) 809-1300
(Registrant's telephone number, including area code)

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Ordinary shares, $0.01 nominal value per share	OSMT	Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Exchange 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 15(d) of the Exchange 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 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. ☐

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

The aggregate market value of the voting and non-voting shares held by non-affiliates of the registrant on June 30, 2020, based upon the closing price of $6.73 of the registrant's ordinary shares as reported on the Nasdaq Global Select Market, was approximately $78.9 million.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class	**Outstanding at March 29, 2021**
Ordinary shares, $0.01 nominal value per share	62,719,131 shares

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2021 Annual Meeting of Shareholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference in Part III items 10-14 of this Annual Report on Form 10-K.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements. All statements other than statements of historical facts contained in this Annual Report on Form 10-K, including statements regarding our future results of operations and financial position, business strategy and plans and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “should,” “estimate,” “continue,” “anticipate,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short- and long-term business operations and objectives and financial needs. Examples of forward-looking statements include, among others, statements we make regarding: our intentions, beliefs or current expectations concerning, among other things, our review of strategic alternatives to maximize shareholder value, future operations; future financial performance, trends and events, particularly relating to sales of current products and the development, approval and introduction of new products; U.S. Food and Drug Administration, or the FDA and other regulatory applications, approvals and actions; the continuation of historical trends; our ability to manage costs and service our debt; and the sufficiency of our cash balances and cash generated from operating and financing activities for future liquidity and capital resource needs.

We may not achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place significant reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. Important factors that could cause actual results and events to differ materially from those indicated in the forward-looking statements include the following:

- if we are unable to successfully develop or commercialize new products, or do so on a timely or cost effective basis, our operating results will suffer;
- due to our dependence on a limited number of products, our business could be materially adversely affected if one or more of our key products do not perform as well as expected;
- failures of or delays in clinical trials could result in increased costs to us and could jeopardize or delay our ability to obtain regulatory approval and commence product sales for new products;
- we are, and will continue to be in the future, a party to legal proceedings that could result in adverse outcomes;
- as of December 31, 2020, we had total outstanding indebtedness of approximately $219.5 million (net of deferred financing costs), and we had unused commitments of $50.0 million under our senior secured credit facilities. Our substantial debt could adversely affect our liquidity and our ability to raise additional capital to fund operations and could limit our ability to pursue our growth strategy or react to changes in the economy or our industry;
- we face intense competition from both brand and generic companies, which could materially adversely affect our financial results and significantly limit our growth;
- a business interruption at our manufacturing facility, our warehouses or at facilities operated by third parties that we rely on could have a material adverse effect on our business;
- our profitability depends on our major customers, and if our relationships with them do not continue as expected, our business, prospects and results of operations could materially suffer;
- if we are unable to develop or maintain our sales capabilities, we may not be able to effectively market or sell our products;

- our competitors and other third parties may allege that we are infringing their intellectual property, forcing us to expend substantial resources in resulting litigation, and any unfavorable outcome of such litigation could have a material adverse effect on our business;

- our profitability depends on coverage and reimbursement by governmental authorities and other third-party payors and healthcare reform and other future legislation creates uncertainty and may lead to reductions in coverage or reimbursement levels;

- we are subject to extensive governmental regulation and we face significant uncertainties and potentially significant costs associated with our efforts to comply with applicable regulations;

- our products or product candidates may cause adverse side effects that could delay or prevent their regulatory approval, or result in significant negative consequences following regulatory approval;

- manufacturing or quality control problems may damage our reputation, require costly remedial activities or otherwise negatively impact our business; and

- other factors that are described in "Risk Factors," beginning on page 31 of this Annual Report on Form 10-K.

The forward-looking statements included in this Annual Report on Form 10-K are made only as of the date hereof. You should not rely upon forward-looking statements as predictions of future events. We cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. Except as required by applicable law, we undertake no obligation to update publicly any forward-looking statements for any reason after the date hereof to conform these statements to actual results or to changes in our expectations.

You should read this Annual Report on Form 10-K with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

SUMMARY OF RISK FACTORS

Below is a summary of the principal factors that make an investment in our ordinary shares speculative or risky. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary and other risks that we face can be found below under the heading "Risk Factors" and should be carefully considered, together with other information in this Annual Report on Form 10-K and our other filings with the SEC, before making an investment decision regarding our ordinary shares.

- Due to our dependence on a limited number of products, our business could be materially adversely affected if one or more of our key products do not perform as well as expected.
- Our business may be adversely affected by the ongoing coronavirus outbreak.
- If we are unable to successfully develop or commercialize new products, or to do so on a timely or cost effective basis, or to extend life cycles of existing products, our operating results will suffer.
- Our profitability depends on our major customers. If these relationships do not continue as expected, including as a result of the continuing trend of consolidation of certain customer groups, our business, financial condition, prospects and results of operations could materially suffer.
- We face intense competition from both brand and generic companies, including companies that sell branded generics or authorized generics, which could significantly limit our growth and materially adversely affect our financial results.
- Our branded pharmaceutical expenditures may not result in commercially successful products.

- There is no certainty that we will be able to execute on any strategic alternatives to maximize shareholder value. If we are unable to execute such strategic alternatives, we may be forced to significantly cut costs.
- We expend a significant amount of resources on research and development, including milestones on in licensed products, which may not lead to successful product introductions.
- Upneeq® may fail to achieve market acceptance by clinicians and patients, or others in the medical community, and the market opportunity for Upneeq may be smaller than we estimate.
- If we are unable to maintain our sales, marketing and distribution capabilities, or establish additional capabilities if and when necessary, we may not be successful in commercializing Upneeq.
- If our products or product candidates do not produce the intended effects, our business may suffer.
- Failures of or delays in clinical trials are common and have many causes, and such failures or delays could result in increased costs to us and could prevent or delay our ability to obtain regulatory approval and commence product sales for new products.
- Our profitability depends on coverage and reimbursement by governmental authorities, private health plans, MCOs and other third party payors; healthcare reform and other future legislation creates uncertainty and may lead to reductions in coverage or reimbursement levels.
- The drug regulatory approval processes of the FDA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.
- We are, and will continue to be in the future, a party to legal proceedings that could result in adverse outcomes.

PART I

ITEM 1. BUSINESS

Overview

We are a fully integrated biopharmaceutical company focused on the development and commercialization of specialty products that target markets with underserved patient populations. In 2020, we continued to transition our business to a specialty pharmaceutical company focused on proprietary products primarily in the eye care and neuroscience areas. The primary drivers of our strategy are highlighted by the recent FDA approval of and commercial launch of RVL-1201, or Upneeq, and the resubmission of our new drug application, or NDA, for arbaclofen extended-release (ER) tablets. Although we received a complete response letter, or CRL, from the FDA with respect to the arbaclofen ER NDA, we continue to support the filing and are evaluating a path forward for FDA approval.

In 2020, we generated total revenues of $177.9 million across our portfolio of promoted specialty eye care, women's health and neurology products, and other non-promoted products, many of which are complex formulations of generic drugs. Our women's health products include Divigel® (estradiol gel, 0.1%) for the treatment of moderate to severe vasomotor symptoms due to menopause. Our neurology products include M-72 (methylphenidate hydrochloride extended-release tablets, 72 mg) for the treatment of attention deficit hyperactivity disorder, or ADHD, in patients aged 13 to 65 and Osmolex ER (amantadine extended-release tablets) for the treatment of Parkinson's disease and drug-induced extrapyramidal reactions, which are involuntary muscle movements caused by certain medications, in adults. Some of our products use our proprietary osmotic-release drug delivery system, Osmodex®, which we believe may offer advantages over alternative ER technologies.

In July 2020, we received regulatory approval from the FDA for RVL-1201, or Upneeq, (oxymetazoline hydrochloride ophthalmic solution, 0.1%), the first approved non-surgical treatment for acquired blepharoptosis, or droopy eyelid, in

adults. We launched Upneeq in September 2020. Our in-person sales efforts are currently focused on ophthalmologists and optometrists while we explore broadening reach to other healthcare professionals. We process prescriptions and dispense Upneeq directly to patients from our own pharmacy, RVL Pharmacy. Also in July 2020, we announced that we entered into an exclusive license agreement with Santen Pharmaceutical Co., Ltd, or Santen, covering the development, registration, and commercialization rights in Japan, China, and other Asian countries as well as EMEA countries to RVL-1201. Santen is responsible for further development of RVL-1201 as well as regulatory approvals and commercialization of RVL-1201 in the licensed territories. Under the terms of the license agreement with Santen, we received an upfront cash payment of $25 million and may receive up to an additional $64 million in cash payments based on the achievement of regulatory and sales milestones in Santen's territories. We are also entitled to royalty payments on net sales of RVL-1201 in Japan, China, and other Asian countries as well as EMEA countries.

Our sales representatives are fully engaged in the launch and in-person promotion of Upneeq, while we continue to maintain non-personal promotional efforts for certain other products in our portfolio, including M-72 in specialty neurology, Divigel in women's health and OB Complete, our family of prescription prenatal dietary supplements. As of December 31, 2020, our commercial portfolio consisted of approximately 35 promoted and non-promoted products. The cash flow from these products has contributed to our investments in research and development and business development activities. Some of our existing products benefit from several potential barriers to entry, including intellectual property protection, formulation and manufacturing complexities, and U.S. Drug Enforcement Administration, or DEA, regulation and quotas for API.

Many of our generic products compete in markets where barriers to entry are lower than markets in which certain of our promoted products compete. Generic products generally contribute most significantly to revenues and gross margins at the time of launch or in periods where no or a limited number of competing products have been approved and launched. In the United States, the consolidation of buyers in recent years has increased competitive pressures on the industry as a whole. As such, the timing of our new product launches can have a significant impact on our financial results. The entrance into the market of additional competition can have a negative impact on the pricing and volume of the affected products which are outside of our control. In particular, methylphenidate ER tablets, venlafaxine ER tablets, or VERT, and Lorzone have experienced, and are expected to continue to experience, significant pricing and market erosion due to additional competition from other generic pharmaceutical companies. This generic pricing erosion has resulted in lower net sales, revenue and profitability from methylphenidate ER tablets, VERT and Lorzone in 2020, and this erosion is expected to continue.

In June 2020, we resubmitted to the FDA our NDA for arbaclofen ER tablets for the alleviation of spasticity in Multiple Sclerosis ("MS") patients. In December 2020, we received a CRL from the FDA with respect to the arbaclofen ER NDA. The CRL stated that we did not provide adequate justification (including in our most recent NDA amendment) for the statistical analysis of the change from baseline to Day 84 in the Total Numeric-transformed Ashworth Scale in the most affected limb, or TNmAS-MAL, scores comparing arbaclofen ER 40 mg to placebo, one of the co-primary endpoints. The FDA made a number of recommendations in its CRL, including that we conduct a new study in order to provide substantial evidence of efficacy of arbaclofen ER. We continue to believe that arbaclofen ER tablets can provide a meaningful benefit to patients. On March 4, 2021, we participated in a meeting with the FDA to discuss their recommendations in the CRL, during which we explored selective review of the currently available data and options for a path forward for FDA approval, including conducting another clinical study.

In November 2020, we and our board of directors announced that we were undertaking a comprehensive review of strategic options to maximize shareholder value. The options under consideration include divestitures of non-strategic assets, re-financings, commercialization or collaboration agreements.

Our Strategy

Our goal is to become a leading specialty biopharmaceutical company by developing and commercializing drugs that provide meaningful benefit to patients with significant market opportunities, potential barriers to entry and long product life cycles. Our strategy to achieve this goal is focused on the following:

Establish Upneeq as the First-line Treatment Option for Acquired Ptosis and Continue to Grow Sales. Upneeq is the first and only FDA-approved treatment option for acquired ptosis (droopy eyelid). We believe that there is a significant commercial opportunity for Upneeq given the meaningful unmet need for a non-invasive treatment across millions of acquired ptosis patients in the United States. Our near-term focus is to gain acceptance for Upneeq among eye care providers as the first-line treatment for this common condition. While promotion of the product will rely heavily on our sales force engaging eye care practices during the first several months of launch, we have also started to raise patient awareness of acquired ptosis and Upneeq through social media (e.g., Facebook and Instagram) and are planning to increase direct-to-consumer advertising in 2021. We believe that healthcare provider interest in Upneeq may ultimately transcend eye care, and we are exploring introducing Upneeq to other therapeutic specialties in the future.

Support Sales of Other Marketed Products. In addition to Upneeq, we continue to market over 35 other products, which continue to generate sales and cash flow for our business. As of December 31, 2020, M-72, Divigel, and OB Complete were products that did not face generic competition and continue to be supported by non-personal promotional efforts such as telesales and providing product samples to physicians. Further, we continue to market a portfolio of non-promoted products highlighted by complex osmotic extended-release formulations methylphenidate ER and VERT. Our non-promoted products are supported by a national account team that manages relationships with major drug-buying consortia, pharmaceutical wholesalers and retailers in the United States.

Successfully Develop Our Osmodex Product Pipeline. We are focused on advancing the development of our clinical programs to further diversify our revenue base. Arbaclofen ER is a late-stage development program that leverages our proprietary Osmodex drug delivery technology. Following the re-submission of the NDA upon completion of Phase III studies, we received a CRL from the FDA. We continue to believe the totality of clinical efficacy and safety data from our clinical studies support a path to FDA approval and that Arbaclofen ER represents an attractive potential product candidate with a significant addressable multiple sclerosis spasticity market in the United States. A study published in 2019 found that up to 913,900 people suffer from multiple sclerosis in the United States. Another study conducted from 1996 to 2003 found that approximately 84% of multiple sclerosis patients suffered from some degree of spasticity. With clinicians indicating that approximately 65% of multiple sclerosis patients with spasticity have received pharmacological treatment, we estimate arbaclofen ER's primary addressable patient population to be approximately 498,980 patients in the United States. We continue to develop other NDA and abbreviated new drug application, or ANDA, product candidates that leverage our proprietary Osmodex drug delivery technology. More specifically, OS870 is an NDA pipeline product intended to treat neurodegenerate disease. The program entered Phase I studies in December 2020 following a pre-IND meeting with the FDA in November 2020. We also continue to advance two additional generic neuroscience ANDA product candidates in various stages of development.

Opportunistically Acquire or In-License Rights to Clinically Differentiated Products, Pipeline Candidates or Technologies. We seek to selectively acquire or in-license approved products and late-stage product candidates that complement our existing product portfolio, pipeline, technology or commercial infrastructure. Our management team has a history of successfully executing and integrating product and company acquisitions, which we believe positions us to capitalize on these opportunities.

Upneeq (RVL-1201) for Acquired Blepharoptosis

We are focused on growing Upneeq with eye care professionals and providing a convenient prescription experience for patients through our pharmacy, RVL Pharmacy. RVL Pharmacy was established as a wholly-owned subsidiary of RVL Pharmaceuticals, Inc. (formerly Revitalid, Inc. and the NDA holder of Upneeq), which is our wholly-owned subsidiary commercializing Upneeq. RVL Pharmacy dispenses Upneeq only and operates only on a cash basis (i.e., it does not submit any claims to third party payors for prescriptions filled). As the first pharmacological treatment for acquired blepharoptosis approved by the FDA in the United States, we believe Upneeq represents an important therapy in the continuum of care for patients with acquired blepharoptosis.

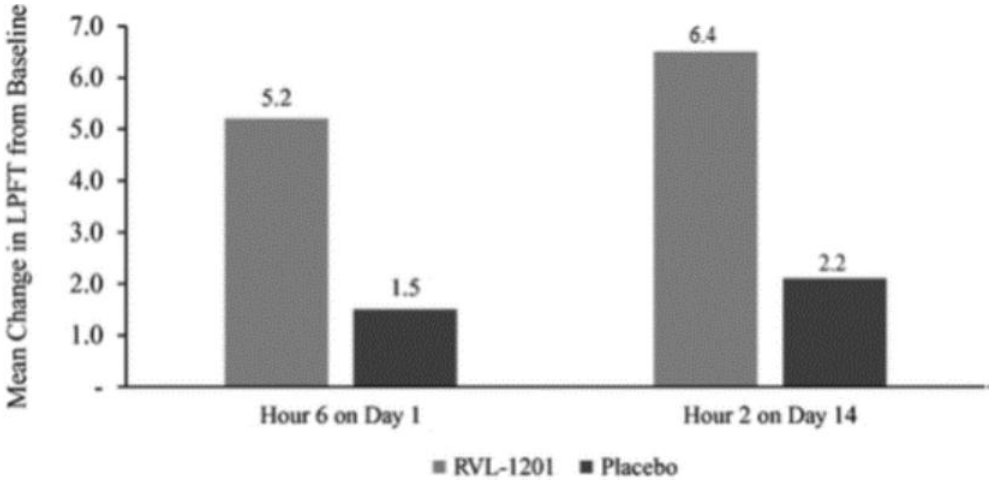
Blepharoptosis, or ptosis, may be present at birth, called congenital blepharoptosis, or acquired over time due to age or illness, called acquired blepharoptosis. Ptosis manifests itself as mild, moderate or severe and can look like the following:

According to a 2018 survey of U.S. optometrists, ophthalmologists and surgeons, approximately 38% of blepharoptosis cases were mild and 48% were moderate. While no robust epidemiological studies exploring the prevalence of blepharoptosis exist, we believe it is a condition affecting millions of Americans. A study conducted in 1995 in the United Kingdom found some level of blepharoptosis in 12% of a sample set of adults age 50 years and older and that 90% of the sample had acquired blepharoptosis after birth.

We acquired the worldwide rights to RVL-1201 in 2017 in exchange for an upfront cash payment plus the obligation to make additional payments based on our net sales of the product. RVL-1201 is manufactured and supplied to us by Nephron Pharmaceuticals Corporation under an exclusive supply agreement that has a term of five years from the production of the initial commercial batches, and automatically renews for additional one-year periods unless either party provides at least 90 days' advance written notice of non-renewal. Milestone payments in an aggregate amount of up to $2.1 million could become payable by us upon the achievement of certain regulatory and sales milestones.

Results from RVL-1201's initial Phase III clinical trial showed that the formulation met its primary efficacy endpoint and was well-tolerated. The 2:1 randomized, double-masked, placebo-controlled study comprised 140 patients with blepharoptosis in two treatment groups for 42 days. Patients treated with RVL-1201 received one full drop in each eye each morning while patients treated with the placebo also received one full drop in each eye each morning. The primary efficacy endpoints were change in baseline visual field using the Leicester Peripheral Field Test or LPFT, on Hour 6 Day 1 ($p=0.0003$) and Hour 2 on Day 14 ($p< 0.0001$). As shown below, patients who received RVL-1201 once-daily experienced a statistically significant improvement in visual field when compared to the placebo group.

RVL-1201 Phase III Clinical Trial Efficacy: Leicester Peripheral Field Test (LPFT)
(Intent-to-Treat Population)



RVL-1201 was generally well tolerated by patients in this clinical trial when administered once daily over a 6-week period. There were no serious adverse events identified from treatment with RVL-1201 in this Phase III clinical trial.

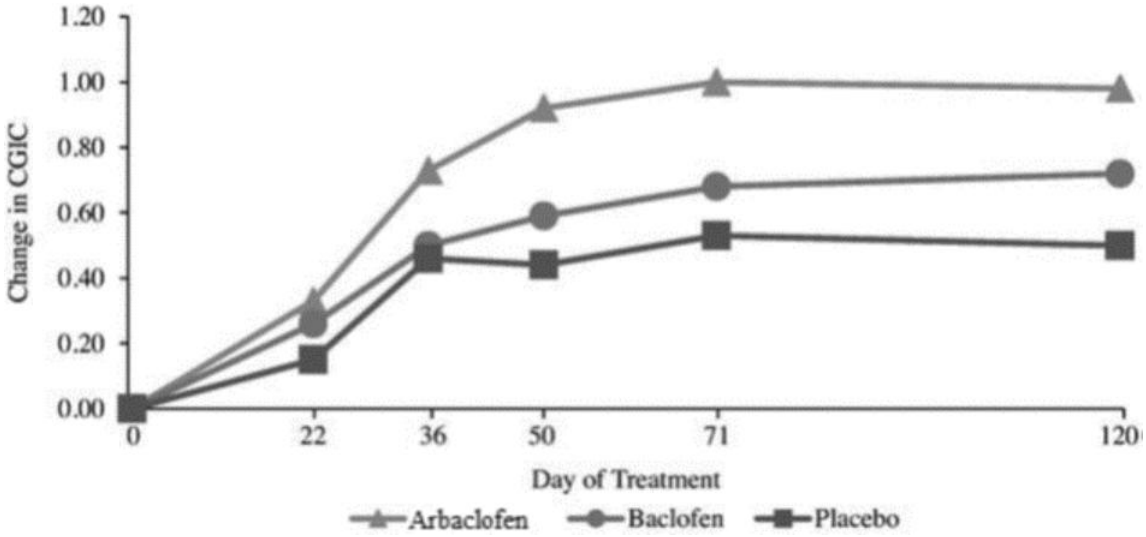
The second Phase III trial was a six-week randomized, multicenter, double-masked, placebo-controlled study to evaluate the safety and efficacy of once-daily treatment of RVL-1201 compared with placebo for the treatment of acquired blepharoptosis. The primary endpoint was a measurement of the mean change from baseline of the number of points seen out of a total of 35 in the top four rows of the LPFT as measured in two time points: hour 6 on day 1 and hour two on day 14. The secondary endpoint was a measurement of the distance between the center of the pupillary light reflex and the upper eyelid margin, or MRD-1. Topline results from the second Phase III trial showed that the trial met both the primary and secondary endpoints. The mean change from baseline on the LPFT on hour 6, day 1 was 6.3 for RVL-1201 versus 2.1 for vehicle ($p < 0.0001$) and on hour two, day 14 was 7.7 for RVL-1201 versus 2.4 for vehicle ($p < 0.0001$). The results also showed a statistically significant improvement in MRD-1 at 5 and 15 minutes, and 2 and 6 hours post dose on days 1 and 14. We also completed a 12-week randomized, multicenter, double-masked, placebo controlled safety study to evaluate the safety of RVL-1201 compared with vehicle for the treatment of acquired blepharoptosis. Results of the safety study showed RVL-1201 was well tolerated when administered once daily over a 12-week period where the majority of adverse events were mild and did not require treatment. On July 8, 2020, the FDA approved Upneeq for the treatment of acquired blepharoptosis, or droopy eyelid, in adults.

Arbaclofen ER for the Alleviation of Spasticity in Multiple Sclerosis (“MS”) Patients

We are also developing arbaclofen ER tablets. Baclofen is the only FDA-approved product that targets the GABA b receptor to treat spasticity. Baclofen is a racemic mixture comprised of an R and an S-isomer. The R-isomer of baclofen, or arbaclofen, has been shown in vivo to be up to 100 times more effective at targeting the GABA b receptor than the S-isomer. We developed our product candidate arbaclofen ER, or arbaclofen, using our proprietary Osmodex drug delivery system for the treatment of spasticity in multiple sclerosis patients. Arbaclofen has received orphan drug designation by the FDA in this indication, and we have patent coverage for arbaclofen extending to 2036.

In 2014, we completed our initial Phase III clinical trial exploring the efficacy, safety and tolerability of arbaclofen in the treatment of spasticity associated with multiple sclerosis. The multicenter, randomized (1:1:1), double-blind, active and placebo-controlled, 16-week study included 341 patients across three groups: Arbaclofen tablets 40 mg/day, baclofen 80 mg/day and placebo. This study compared the efficacy and safety of arbaclofen doses (20 mg/day for 14 days, 30 mg/day for 14 days, and 40 mg/day for 12 weeks) with baclofen tablets (40 mg/day for 14 days, 60 mg/day for 14 days, and 80 mg/day for 12 weeks) against a placebo. The trial’s co-primary efficacy endpoints were Clinician Global Impression of Change, or CGIC, and Total Numeric-transformed Ashworth Scale in the most affected limb, or TNmAS-MAL. As shown below, in this Phase III clinical trial, arbaclofen demonstrated a statistically significant improvement in CGIC when compared to the placebo while baclofen failed to demonstrate a statistically significant improvement in CGIC when compared to the placebo.

Summary of Change in CGIC Score by Treatment Day



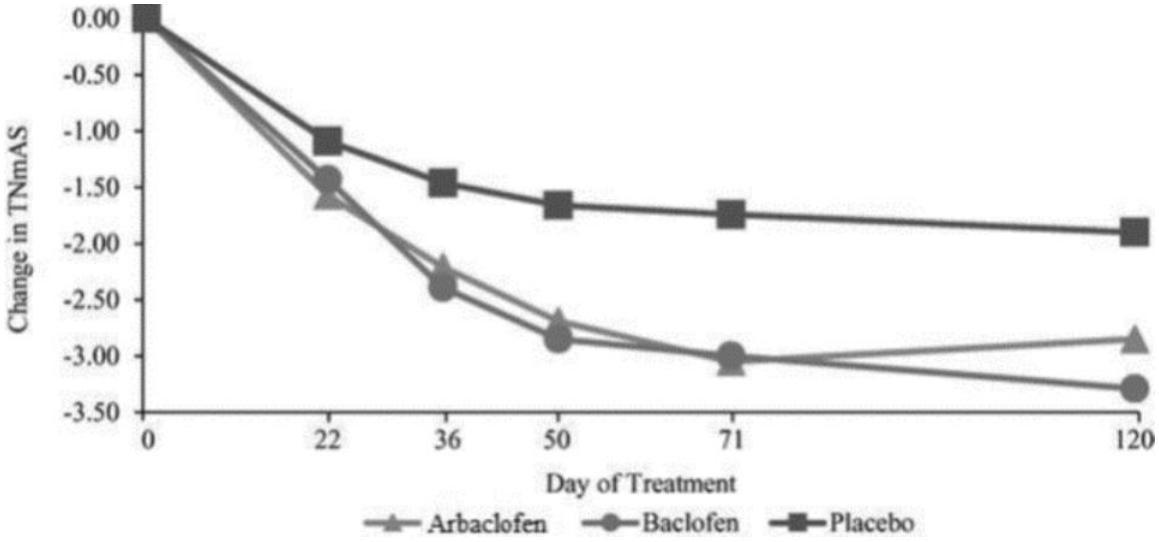
Summary of CGIC Score Results, Intent-to-Treat Population(1)

CGIC Day 120	Statistic	Arbaclofen	Baclofen	Placebo
	LS Mean (standard error)	1.00 (0.12)	0.68 (0.12)	0.52 (0.11)
	p-value vs placebo	0.0004	0.2434	

(1) Least squares means (LS Means) and p-values from analysis of covariance model including factors for site and treatment group

As shown below, arbaclofen also demonstrated a statistically significant improvement in the TNmAS-MAL in most affected limb when compared to the placebo.

Summary of Change in TNmAS Score by Treatment Day



Summary of TNmAS Results, Intent-to-Treat Population(1)

TNmAS Day 120	Statistic	Arbaclofen	Baclofen	Placebo
	LS Mean (standard error)	-2.9 (0.24)	-3.32 (0.25)	-1.95 (0.22)
	p-value vs placebo	0.0006	<0.0001	

(1) LS Means and p-values from analysis of covariance model including factors for site and treatment group

This clinical trial supported our conclusion that daily treatment with arbaclofen was safe and well tolerated by subjects with muscle spasticity related to multiple sclerosis. Adverse events reported in this study were consistent with the expected adverse events for baclofen, and there did not appear to be any new or unexpected safety issues relative to treatment with arbaclofen extended-release tablets. The overall incidence of treatment emergent adverse events, or TEAEs, and the number of TEAEs leading to discontinuation from the study were lower in the arbaclofen group compared to the baclofen group.

Summary of Treatment Emergency Adverse Events >2%, Safety Population

Preferred Term	Arbaclofen (N=110) n (%)	Baclofen (N=113) n (%)	Placebo (N=118) n (%)	All Subjects (N=341) n (%)
Somnolence	17 (15.5)	27 (23.9)	6 (5.1)	50 (14.7)
Dizziness	8 (7.3)	12 (10.6)	4 (3.4)	24 (7.0)
Headache	8 (7.3)	7 (6.2)	1 (0.8)	16 (4.7)
Multiple sclerosis relapse	3 (2.7)	0 (0.0)	4 (3.4)	7 (2.1)
Muscle spasticity	3 (2.7)	2 (1.8)	2 (1.7)	7 (2.1)
Urinary tract infection	9 (8.2)	12 (10.6)	6 (5.1)	27 (7.9)
Nasopharyngitis	3 (2.7)	2 (1.8)	4 (3.4)	9 (2.6)
Influenza	4 (3.6)	0 (0.0	1 (0.8)	5 (1.5)
Asthenia	13 (11.8)	21 (18.6)	5 (4.2)	39 (11.4)
Fatigue	4 (3.6)	4 (3.5)	2 (1.7)	10 (2.9)
Irritability	3 (2.7)	2 (1.8)	1 (0.8)	6 (1.8)
Muscular weakness	12 (10.9)	13 (11.5)	3 (2.5)	28 (8.2)
Pollakiuria	6 (5.5)	11 (9.7)	3 (2.5)	20 (5.9)
Urinary incontinence	3 (2.7)	4 (3.5)	2 (1.7)	9 (2.6)
Micturition urgency	0 (0.0)	6 (5.3)	0 (0.0)	6 (1.8)
Nocturia	0 (0.0)	4 (3.5)	1 (0.8)	5 (1.5)
Nausea	4 (3.6)	4 (3.5)	2 (1.7)	10 (2.9)
Dry mouth	1 (0.9)	7 (6.2)	0 (0.0)	8 (2.3)
Fall	1 (0.9)	3 (2.7)	2 (1.7)	6 (1.8)
Ear and labyrinth disorders	5 (4.5)	7 (6.2)	1 (0.8)	13 (3.8)
Vertigo	3 (2.7)	6 (5.3)	0 (0.0)	9 (2.6)
Cough	0 (0.0)	3 (2.7)	0 (0.0)	3 (0.9)

The results are reported as n (%) for the safety population.

The results summarized in the table and charts above are from the corrected dataset from the initial Phase III clinical trial. On June 10, 2015, Osmotica Holdings Corp Limited submitted an NDA containing data from this initial Phase III clinical trial, which was conducted and completed prior to the Business Combination. During the NDA review process, the FDA requested an independent audit of five of the 35 study sites, which were located in Russia and Ukraine. The audit found numerous irregularities and deviations from good clinical practices, which led to a complete response letter on July 9, 2016. The audit observations were thoroughly investigated, and data were corrected where appropriate. In December 2016, we met with the FDA to discuss the path forward for the application. The FDA indicated that, based on the initial audit findings, it considered the data from the Phase III clinical trial to be insufficient to support a marketing application. Following the meeting, we decided to complete a single additional Phase III clinical trial.

In the first quarter of 2019, we received topline data from our second Phase III clinical trial of arbaclofen in multiple sclerosis patients with spasticity, or the 3004 study. The 3004 study was a multicenter, randomized, double-blind placebo controlled study in which treatment groups received either placebo, 40 mg arbaclofen per day or 80 mg arbaclofen per day. The co-primary endpoints were change from baseline in TNmAS-MAL on day 84, and CGIC scores on day 84. Arbaclofen did not meet the co-primary endpoint of showing greater improvement than placebo as measured by CGIC scores; however, the study did meet the co-primary endpoint of showing a statistically significant improvement in spasticity relative to placebo as measured by the TNmAS-MAL for both doses of arbaclofen (p=0.0482 and p=0.0118 for 40 mg and 80 mg per day, respectively).

However, positive mean CGIC values indicated all three treatment groups improved from baseline. Further, it appears that there was a dose-response relationship between the two strengths as the 80 mg per day dose exhibited a greater improvement in spasticity as assessed by the TNmAS-MAL values than the 40 mg per day dose. Though arbaclofen 80 mg per day had a higher discontinuation rate in the study, the safety and tolerability data were in line with previously

reported results, most notably a somnolence incidence of 10.1% and 14.5% for the 40-mg and 80-mg treatment arms, respectively, compared to 10.1% for the placebo treatment arm. Somnolence is one of the most frequently reported dose-limiting adverse events associated with baclofen treatment today. Our analysis of the integrated 40 mg data from both the 3002 and 3004 studies exhibited a statistically significant benefit for subjects in both TNmAS-MAL and CGIC endpoints. Based on these results, we requested a Type C meeting with the FDA to address questions regarding our plans for resubmission of our NDA and in lieu of a face-to-face meeting we received written responses from the FDA in the fourth quarter of 2019.

In June 2020, we resubmitted to the FDA our NDA for arbaclofen ER tablets, and on December 28, 2020, the FDA issued a CRL. The CRL stated that we did not provide adequate justification (including in our most recent NDA amendment) for the statistical analysis of the change from baseline to Day 84 in TNmAS-MAL scores comparing arbaclofen 40 mg to placebo, one of the co-primary endpoints. The FDA made recommendations in its CRL, including that we conduct a new study in order to provide substantial evidence of efficacy of arbaclofen ER. On January 23, 2021, we submitted a Type A meeting request to the FDA to discuss the CRL's recommendations and obtain advice on a path forward for the NDA. The meeting took place on March 4, 2021, during which we explored selective review of the currently available data and options for a path forward for FDA approval, including conducting another clinical study. If we are required to conduct any additional clinical trials for arbaclofen, our development costs will increase, our regulatory approval process could be delayed or denied and we may not be able to commercialize and commence sales of arbaclofen ER in the timeframe currently contemplated, if at all.

Our Technology

Osmodex: Our Proprietary Drug Delivery System

Certain of our products incorporate our Osmodex drug delivery technology. Our technology allows us to manufacture tablets with one or more active drugs, and in combinations of immediate-release, controlled-release, delayed-release and extended-release, or ER. We believe that our proprietary Osmodex drug delivery system is well-suited to address certain limitations of existing therapies that have less than optimal efficacy or unfavorable side effect profiles as a result of formulation, pharmacokinetic profiles or other complexities. However, whether our proprietary Osmodex drug delivery system will suitably be paired with a given API is not certain or predictable. Each successful pairing that we have achieved in the past was the result of rigorous research, development and innovation. With that approach, our research and development team has led the successful clinical development of approved NDAs incorporating our proprietary Osmodex drug delivery system, including Allegra D® (pseudoephedrine and H1 antagonist), venlafaxine extended-release tablets (VERT), Khedezla® (desvenlafaxine extended-release tablets) and Osmolex ER.

Our Portfolio

As of December 31, 2020, we marketed a diverse portfolio consisting of approximately 35 promoted and non-promoted products, several of which incorporate our proprietary Osmodex drug delivery system. Many of our existing products benefit from potential barriers to entry, including intellectual property protection, formulation and manufacturing complexities, and DEA regulation and quotas for API. The following table shows our promoted and non-promoted product portfolio at December 31, 2020.

Promoted Products (in-person)	Indication	Osmodex Technology	U.S. Regulatory Status
Eye Care			
Upneeq	Acquired blepharoptosis (droopy eyelid	No	Approved

Promoted Products (telesales)	Indication	Osmodex Technology	U.S. Regulatory Status
Specialty Neurology			
M-72	ADHD in patients aged 13 to 65	Yes	Approved
Arbaclofen ER	Multiple sclerosis spasticity	Yes	Phase III
OS870	Neurodegenerative disorder	Yes	Phase I
Women's Health			
Divigel	Menopause	No	Approved
OB Complete	Various dietary needs during prenatal, pregnancy and postnatal periods	No	Dietary Supplement

Non-Promoted Products	Indication	Osmodex Technology	U.S. Regulatory Status
Methylphenidate ER	ADHD	Yes	Approved
Venlafaxine ER tablets (VERT)	Major Depressive Disorder and Social Anxiety Disorder	Yes	Approved
Hydromorphone ER	Pain	Yes	Approved
Nifedipine ER*	Hypertension	Yes	Approved
Sodium Benzoate / Sodium Phenylacetate	Hyperammonemia	No	Approved
Oxybutynin ER*	Overactive bladder	Yes	Approved
Prescription Prenatal Vitamins	Nutritional requirements during pregnancy	No	Dietary Supplement
Chlorzoxazone (Lorzone AG)	Muscle spasms	No	Approved
Tramadol ER (ConZip AG)	Pain	No	Approved
Nitrofurantoin	Urinary tract infections	No	Approved
Osmodex ANDAs	Various	Yes	In Development (2)

- Out-licensed ANDAs with a commercial partner

Our promoted products are led by Upneeq, the first and only FDA-approved treatment for acquired blepharoptosis, or droopy eyelid, in adult patients, which was approved by FDA in July 2020 and was launched in September 2020. As the first pharmacological treatment for acquired blepharoptosis in the United States, Upneeq represents an important daily therapy in the continuum of care for patients with acquired blepharoptosis.

While our sales representatives are fully engaged in the launch and in-person promotion of Upneeq, we continue to maintain non-personal promotional efforts for certain other products in our portfolio, including M-72 in specialty neurology, Divigel in women’s health, and OB Complete, our family of prescription prenatal dietary supplements. M-72, a novel once-daily dosage of a single 72-mg tablet of extended-release methylphenidate, was approved by the FDA in July 2017 to treat ADHD in patients aged 13 to 65. We launched M-72 in the United States in April 2018. We are the only provider to date of the 72-mg single-dose tablet. Accordingly, we believe there is a market opportunity for the convenience of the single daily dose offered by M-72, which studies have shown to be bioequivalent to two 36-mg methylphenidate ER tablets. As the only approved 72-mg single-dose tablet of methylphenidate in the United States, the FDA has designated M-72 as the reference standard. A reference standard is the drug product selected by the FDA that an applicant seeking approval of an ANDA must use in conducting an in vivo bioequivalence study required for approval. We have obtained patent protection through February 2037 covering certain aspects of the formulation of M-72 that prevent the accelerated release of methylphenidate when exposed to alcohol.

Divigel contains plant-based estradiol and is used as a hormone replacement therapy to treat moderate to severe vasomotor symptoms, which include hot flashes, sweating and flushing caused by menopause. The product was

approved by the FDA in June 2007. Menopause typically occurs between the ages of 49 and 52 when a woman's menstrual cycle stops. As a result, a woman's ovaries cease producing hormones (estrogen and progesterone), which can lead to vasomotor symptoms. Accordingly, for patients experiencing moderate to severe symptoms, treatment focuses on hormonal replacement. Divigel is available to patients in fixed dose packets of five strengths, 0.25 mg, 0.50 mg, 0.75 mg, 1.0 mg and 1.25 mg. The gel is applied once daily to the upper thigh. The Divigel 1.0 mg dosage has been shown to reduce moderate to severe hot flashes by nearly half at two weeks of use and eliminate hot flashes by almost 80% at 12 weeks of use. Divigel is manufactured by Orion Corporation pursuant to a supply agreement that will expire in January 2026 and, unless terminated by either Orion Corporation or us upon at least two years' notice, will automatically renew for successive five-year terms.

VERT (venlafaxine extended release tablets) was approved in May 2008 and is indicated for the treatment of major depressive disorder, or MDD, and social anxiety disorder, or SAD. VERT is approved for four dosage strengths: 37.5 mg, 75 mg, 150 mg and 225 mg, and is available as a brand and authorized generic version. As of December 31, 2020, the FDA had approved two AB rated generic equivalents of the 37.5 mg strength, four AB rated generic equivalents of the 75 mg strength, five AB rated generic equivalents of the 150 mg strength, and five AB rated generic equivalents of the 225 mg strength. Lorzone is an immediate-release form of chlorzoxazone indicated for the treatment of acute musculoskeletal pain in conjunction with rest and physical therapy that was approved by the FDA in June 2010. It is available in two dosage strengths, 375 mg and 750 mg. We launched an authorized generic form of chlorzoxazone in April 2019. As of December 31, 2020, the FDA had approved five AB rated generic equivalents of the 375 mg strength and six AB rated generic equivalents of the 750 mg strength. ConZip, tramadol hydrochloride (a Schedule IV opioid), is indicated for the management of pain that is severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. ConZip was approved by the FDA in May 2010, and is available in three strengths: 100 mg (25 mg immediate release/75 mg extended release), 200 mg (50 mg immediate release/150 mg extended release) and 300 mg (50 mg immediate release/250 mg extended release). We launched an authorized generic version of tramadol in 2015. There are currently no AB rated generic equivalents approved by the FDA.

Our NDA development pipeline is highlighted by arbaclofen ER. OS870, another product candidate that leverages our Osmodex drug delivery system, is currently in Phase 1 clinical trials. Our non-promoted product portfolio includes methylphenidate ER and VERT as well as smaller volume ANDAs and prescription dietary supplements. As of December 31, 2020, our non-promoted pipeline included two generic neuroscience ANDA products in various stages of development.

Research and Development

Our research and development team leverages its expertise across a variety of scientific disciplines to formulate product candidates and advance programs through the drug development and approval process and post marketing studies. We have capabilities in regulatory affairs, pharmaceutical science, analytical chemistry, preclinical studies, clinical trial design and operations, quality assurance and compliance, medical affairs and pharmacovigilance. We deploy these competencies to advance a product candidate through the drug development process, and develop data and intellectual property to improve our products, support commercialization and extend product life cycles. Scientific staff in Buenos Aires, Argentina, Bridgewater, New Jersey and Marietta, Georgia use their expertise in formulation development (including in our proprietary Osmodex drug delivery system), chemistry and material science to focus on identifying drug compounds for re-formulation to achieve either new therapeutic attributes (e.g., extended release) or indications. Our clinical development team utilizes its experience to design and implement clinical trials to support submission of NDAs for organically developed and in-licensed product candidates. Additionally, we perform early-stage manufacturing and technology transfer engineering and evaluate any unique intellectual property arising from these activities. For development candidates that we have elected to progress forward, scale-up process engineering has been performed at our manufacturing plant in Marietta, Georgia.

As of December 31, 2020, we had 84 employees in our research and development department worldwide. Our staff of research scientists has expertise in the drug development process, from pre-formulation studies and formulation development, to scale-up and manufacturing. The clinical development and medical affairs team assumes product stewardship from pre-clinical testing and first-in-human studies, Phase I, Phase II and Phase III clinical trials through to

post-marketing studies, risk management and pharmacovigilance activities. Our research and development team has extensive experience developing and coordinating clinical trial programs and communicating with the FDA throughout the process to ensure proper trial design and an efficient clinical and drug development process. Our team has a successful track record of developing products and receiving FDA approval for NDAs and ANDAs.

Intellectual Property

We have built and continue to develop our intellectual property portfolio for our products and product candidates. We rely on our substantial know-how, technological innovation, patents, trademarks, trade secrets, other intellectual property and in-licensing opportunities to maintain and develop our competitive position. We pursue patent protection in the United States and selected international markets. As of December 31, 2020, we had 45 U.S. patents, 34 patents outside the United States and 25 pending patent applications, the last of which expires in 2039.

Competition

The pharmaceutical industry is intensely competitive and subject to rapid and significant technological change. We will continue to face competition from various global pharmaceutical, biotechnology, specialty pharmaceutical and generic drug companies that engage in drug development activities. Many of our competitors have similar products that focus on the same diseases and conditions that our current and future pipeline products address. Many of our competitors have greater financial flexibility to deploy capital in certain areas as well as more commercial and other resources, marketing and manufacturing organizations, and larger research and development staff. As a result, these companies may be able to pursue strategies or approvals that we are not able to finance or otherwise pursue and may receive FDA, European Medicines Agency or other applicable regulatory approvals more efficiently or rapidly than us. Also, our competitors may have more experience in marketing and selling their products post-approval, and gaining market acceptance more quickly. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies. Our products could become less competitive if our competitors are able to license or acquire technology that is more effective or less costly and thereby offer an improved or a cheaper alternative to our products. We expect any products that we develop and commercialize will compete on the basis of, among other things, efficacy, safety, convenience of administration and delivery, price and the availability of reimbursement from government and other third-party payors. We also expect to face competition in our efforts to identify appropriate collaborators or partners to help commercialize our product portfolio in our target commercial markets.

Government Regulation and Approval Process

Government authorities in the United States at the federal, state and local level, including the FDA, the Federal Trade Commission, or FTC, and the DEA, extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, recordkeeping, promotion, advertising, distribution, marketing and export and import of products such as those we market. For both currently marketed and future products, failure to comply with applicable regulatory requirements can, among other things, result in suspension of regulatory approval and possible civil and criminal sanctions. Regulations, enforcement positions, statutes and legal interpretations applicable to the pharmaceutical industry are constantly evolving and are not always clear. Significant changes in regulations, enforcement positions, statutes and legal interpretations could have a material adverse effect on our financial condition and results of operations.

Additionally, future healthcare legislation or other legislative proposals at the federal and state levels could bring about major changes in the affected health care systems, including statutory restrictions on the means that can be employed by brand and generic pharmaceutical companies to settle Paragraph IV patent litigations. We cannot predict the outcome of such initiatives, but such initiatives, if passed, could result in significant costs to us in terms of costs of compliance and penalties associated with failure to comply.

Pharmaceutical Regulation in the United States

In the United States, the FDA regulates drugs under the U.S. Federal Food, Drug, and Cosmetic Act, or FDCA, and its implementing regulations. The process of obtaining regulatory approvals and the subsequent compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process or after approval may subject an applicant to administrative or judicial sanctions. These sanctions could include the FDA's refusal to approve pending applications, withdrawal of an approval, a clinical hold, Warning Letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties. Any agency or judicial enforcement action could have a material adverse effect on us.

FDA approval is required before any new unapproved drug or dosage form, including a new use of a previously approved drug or a generic version of a previously approved drug, can be marketed in the United States. The process required by the FDA before a new drug may be marketed in the United States generally involves:

- completion of preclinical laboratory and animal testing and formulation studies in compliance with the FDA's current good laboratory practice, or GLP, regulations;
- submission to the FDA of an investigational new drug application, or IND, for human clinical testing, which must become effective before human clinical trials may begin in the United States;
- approval by an institutional review board, or IRB, before each trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with current good clinical practice, or GCP, to establish the safety and efficacy of the proposed drug product for each intended use;
- satisfactory completion of an FDA pre-approval inspection of the facility or facilities at which the product is manufactured to assess compliance with the FDA's Current Good Manufacturing Practice, or cGMP, regulations to assure that the facilities, methods and controls are adequate to preserve the drug's identity, strength, quality and purity;
- submission to the FDA of an NDA;
- satisfactory completion of a potential review by an FDA advisory committee, if applicable; and
- FDA review and approval of the NDA.

When developing a branded product and bringing it to market, the first step in proceeding to clinical studies is preclinical testing. Preclinical tests are intended to provide a laboratory or animal study evaluation of the product to determine its chemistry, formulation and stability. Toxicology studies are also performed to assess the potential safety of the product. The conduct of the preclinical tests must comply with federal regulations and requirements, including GLPs. The results of these studies are submitted to the FDA as part of an IND application along with other information, including information about product chemistry, manufacturing and controls and a proposed clinical trial protocol. Long-term preclinical tests, such as animal tests of reproductive toxicity and carcinogenicity, may continue after the IND application is submitted.

The IND application automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises concerns or questions relating to one or more proposed clinical trials, including concerns that human research subjects are or would be exposed to an unreasonable and significant risk of illness or injury, and places the clinical trial on a clinical hold. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. A separate submission to an existing IND application must also be made for each successive clinical trial conducted during product development. Further, an independent IRB must review and approve

the plan for any clinical trial and informed consent information for subjects before the trial commences and it must monitor the study until completed.

The FDA, the IRB or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk or for failure to comply with the IRB's requirements, or may impose other conditions. GCP requirements include the requirement that all research subjects provide their informed consent in writing for their participation in any clinical trial, unless a narrow regulatory exemption applies. For purposes of an NDA submission and approval, human clinical trials are typically conducted in the following sequential phases, which may overlap or be combined:

- Phase I: In Phase I, through the initial introduction of the drug into healthy human volunteers or patients, the drug is tested to assess absorption, distribution, metabolism, elimination, pharmacokinetics and safety.

- Phase II: Phase II usually involves trials in a limited patient population to determine the effectiveness of the drug for a particular indication, dosage tolerance and optimum dosage and to identify common adverse effects and safety risks.

- Phase III: Phase III clinical trials are undertaken to obtain the additional information about clinical efficacy and safety in a larger number of patients, typically at geographically dispersed clinical trial sites, to permit the FDA to evaluate the overall benefit-risk relationship of the drug and to provide adequate information for the labeling of the drug. In most cases, the FDA requires two adequate and well controlled Phase III clinical trials to demonstrate the efficacy of the drug. A single Phase III clinical trial with other confirmatory evidence may be sufficient in rare instances, for example, where the study is a large multicenter trial demonstrating internal consistency and a statistically persuasive finding of a clinically meaningful effect on mortality, irreversible morbidity or prevention of a disease with a potentially serious outcome and confirmation of the result in a second trial would be practically or ethically impossible.

After completion of the required clinical testing, an NDA is prepared and submitted to the FDA. FDA approval of the NDA is required before marketing of the product may begin in the United States. The NDA must include, among other things, the results of all preclinical, clinical and other testing and a compilation of data relating to the product's pharmacology, chemistry, manufacture and controls. Under federal law, the submission of most NDAs is subject to a substantial application user fee, and the manufacturer or sponsor under an approved NDA is also subject to annual program fees. The FDA has 60 days from its receipt of an NDA to determine whether the application will be accepted for filing based on the agency's threshold determination that it is sufficiently complete to permit substantive review. The FDA may request additional information rather than accept an NDA for filing. In this event, the NDA must be resubmitted with the additional information and is subject to payment of additional user fees. The resubmitted application is also subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. Under the Prescription Drug User Fee Act, as amended, the FDA has agreed to certain performance goals in the review of NDAs through a two-tiered classification system, Standard Review and Priority Review. Priority Review designation is given to drugs that are intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness over existing therapies. The FDA endeavors to review most applications subject to Standard Review within ten to twelve months whereas the FDA's goal is to review most Priority Review applications within six to eight months, depending on whether the drug is a new molecular entity.

The FDA may refer applications for novel drug products or drug products which present difficult questions of safety or efficacy to an advisory committee for review, evaluation and recommendation as to whether the application should be approved and under what conditions. Before approving an NDA, the FDA will typically inspect one or more clinical sites to assure compliance with GCP requirements. Additionally, the FDA will inspect the facility or the facilities at which the drug is manufactured. The FDA will not approve the NDA unless it determines that the manufacturing process and facilities are in compliance with cGMP requirements and are adequate to assure consistent production of the product within required specifications and the NDA contains data that provide substantial evidence that the drug is safe and effective for the labeled indication.

After the FDA evaluates the NDA and the manufacturing facilities, it issues either an approval letter, which authorizes commercial marketing of the drug with specific prescribing information for specific indications, or a complete response letter to indicate that the review cycle for an application is complete and that the application is not ready for approval. A complete response letter generally outlines the deficiencies in the submission and may require substantial additional testing, or information, in order for the FDA to reconsider the application. Even with submission of this additional information, the FDA may ultimately decide that an application does not satisfy the regulatory criteria for approval. If, or when, the deficiencies have been addressed to the FDA's satisfaction in a resubmission of the NDA, the FDA will issue an approval letter.

As a condition of NDA approval, the FDA may require a risk evaluation and mitigation strategy, or REMS, to help ensure that the benefits of the drug outweigh the potential risks. If the FDA determines a REMS is necessary during review of the application, the drug sponsor must agree to the REMS plan at the time of approval. A REMS may be required to include various elements, such as a medication guide or patient package insert, a communication plan to educate healthcare providers of the drug's risks, limitations on who may prescribe or dispense the drug, or other elements to assure safe use, such as special training or certification for prescribing or dispensing, dispensing only under certain circumstances, special monitoring and the use of patient registries. In addition, the REMS must include a timetable to periodically assess the strategy. The requirement for a REMS can materially affect the potential market and profitability of a drug.

Moreover, product approval may require substantial post-approval testing and surveillance to monitor the drug's safety or efficacy, and the FDA has the authority to prevent or limit further marketing of a product based on the results of these post-marketing programs. Once granted, product approvals may be withdrawn if compliance with regulatory standards is not maintained or certain problems are identified following initial marketing. Drugs may be marketed only for the approved indications and in accordance with the provisions of the approved labeling, and, even if the FDA approves a product, it may limit the approved indications for use for the product or impose other conditions, including labeling or distribution restrictions or other risk-management mechanisms.

Further changes to some of the conditions established in an approved application, including changes in indications, labeling, or manufacturing processes or facilities, require submission and FDA approval of a new NDA or NDA supplement before the change can be implemented, which may require us to develop additional data or conduct additional preclinical studies and clinical trials. An NDA supplement for a new indication typically requires clinical data similar to that in the original application, and the FDA uses the similar procedures in reviewing NDA supplements as it does in reviewing NDAs.

Disclosure of Clinical Trial Information

Sponsors of certain clinical trials of FDA-regulated products, including drugs, are required to register and disclose certain clinical trial information on www.ClinicalTrials.gov. Information related to the product, subject population, phase of investigation, study sites and investigators, and other aspects of the clinical trial is then made public as part of the registration. Sponsors are also obligated to discuss certain results of their clinical trials after completion. Disclosure of the results of these trials can be delayed until the new product or new indication being studied has been approved. Competitors may use this publicly available information to gain knowledge regarding the progress of development programs.

Post-Approval Requirements

Once an NDA is approved, a product will be subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to drug listing and registration, recordkeeping, periodic reporting, product sampling and distribution, adverse event reporting and advertising, marketing and promotion, including standards and regulations for direct-to-consumer advertising, off-label promotion, industry-sponsored scientific and educational activities and promotional activities involving the Internet. Drugs may be marketed only for the approved indications and in a manner consistent with the provisions of the approved labeling. While physicians may prescribe for off-label uses, manufacturers may only promote for the approved indications and in accordance with the provisions of the approved labeling. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label

uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability. There also are extensive DEA regulations applicable to controlled substances.

Adverse event reporting and submission of periodic reports is also required following FDA approval of an ANDA or NDA. Additionally, the FDA may require post-marketing testing, known as Phase IV testing, REMS, and surveillance to monitor the effects of an approved product, or the FDA may place conditions on an approval that could restrict the distribution or use of the product. In addition, quality-control, drug manufacture, packaging and labeling procedures must continue to comply with cGMPs after approval. Drug manufacturers and certain of their subcontractors are required to register their establishments and list their marketed products with the FDA and certain state agencies. Registration with the FDA subjects entities to periodic unannounced inspections by the FDA, during which the agency inspects manufacturing facilities to assess compliance with cGMPs. Accordingly, manufacturers must continue to expend time, money, and effort in the areas of production and quality-control to maintain compliance with cGMPs. Regulatory authorities may withdraw product approvals or request product recalls if a company fails to comply with regulatory standards, if it encounters problems following initial marketing or if previously unrecognized problems are subsequently discovered. The FDA may also impose a REMS requirement on a drug already on the market if the FDA determines, based on new safety information, that a REMS is necessary to ensure that the drug's benefits outweigh its risks. In addition, regulatory authorities may take other enforcement action, including, among other things, Warning Letters, the seizure of products, injunctions, consent decrees placing significant restrictions on or suspending manufacturing operations, refusal to approve pending applications or supplements to approved applications, civil penalties and criminal prosecution.

The Hatch-Waxman Amendments

505(b)(2) NDAs

The FDA is also authorized to approve an alternative type of NDA under Section 505(b)(2) of the FDCA. Section 505(b)(2) permits the filing of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference from the data owner. The applicant may rely upon the FDA's findings of safety and efficacy for an approved product that acts as the "listed drug." The FDA may also require 505(b)(2) applicants to perform additional studies or measurements to support the change from the listed drug. The FDA may then approve the new product candidate for all, or some, of the conditions of use for which the branded reference drug has been approved, or for a new condition of use sought by the 505(b)(2) applicant.

Abbreviated New Drug Applications

The Hatch-Waxman amendments to the FDCA established a statutory procedure for submission and FDA review and approval of ANDAs, for generic versions of listed drugs. An ANDA is a comprehensive submission that contains, among other things, data and information pertaining to the API, drug product formulation, specifications and stability of the generic drug, as well as analytical methods, manufacturing process validation data and quality control procedures. Premarket applications for generic drugs are termed abbreviated because they generally do not include clinical data to demonstrate safety and effectiveness. However, a generic manufacturer is typically required to conduct bioequivalence studies of its test product against the listed drug. The bioequivalence studies for orally administered, systemically available drug products assess the rate and extent to which the API is absorbed into the bloodstream from the drug product and becomes available at the site of action. Bioequivalence is established when there is an absence of a significant difference in the rate and extent for absorption of the generic product and the reference listed drug. For some drugs, other means of demonstrating bioequivalence may be required by the FDA, especially where rate or extent of absorption are difficult or impossible to measure. The FDA will approve the generic product as suitable for an ANDA application if it finds that the generic product does not raise new questions of safety and effectiveness as compared to the reference listed drug. A product is not eligible for ANDA approval if the FDA determines that it is not bioequivalent to the reference listed drug if it is intended for a different use or if it is not subject to, and requires, an approved Suitability Petition.

Orange Book Listing

In seeking approval for a drug through an NDA, including a 505(b)(2) NDA, applicants are required to list with the FDA certain patents whose claims cover the applicant's product. Upon approval of an NDA, each of the patents listed in the application for the drug is then published in the Orange Book. Any applicant who files an ANDA seeking approval of a generic equivalent version of a drug listed in the Orange Book or a 505(b)(2) NDA referencing a drug listed in the Orange Book must certify to the FDA (i) that there is no patent listed with the FDA as covering the relevant branded product, (ii) that any patent listed as covering the branded product has expired, (iii) that the patent listed as covering the branded product will expire prior to the marketing of the generic product, in which case the ANDA will not be finally approved by the FDA until the expiration of such patent or (iv) that any patent listed as covering the branded drug is invalid or will not be infringed by the manufacture, sale or use of the generic product for which the ANDA is submitted. A notice of the Paragraph IV certification must be provided to each owner of the patent that is the subject of the certification and to the holder of the approved NDA to which the ANDA or 505(b)(2) application refers. The applicant may also elect to submit a "section viii" statement certifying that its proposed label does not contain (or carves out) any language regarding the patented method-of-use rather than certify to a listed method-of-use patent.

If the reference NDA holder and patent owners assert a patent challenge directed to one of the Orange Book listed patents within 45 days of the receipt of the Paragraph IV certification notice, the FDA is prohibited from approving the application until the earlier of 30 months from the receipt of the Paragraph IV certification, expiration of the patent, settlement of the lawsuit or a decision in the infringement case that is favorable to the applicant. The ANDA or 505(b)(2) application also will not be approved until any applicable non-patent exclusivity listed in the Orange Book for the branded reference drug has expired as described in further detail below.

Non-Patent Exclusivity

In addition to patent exclusivity, the holder of the NDA for the listed drug may be entitled to a period of non-patent exclusivity, during which the FDA cannot approve an ANDA or 505(b)(2) application that relies on the listed drug.

For example, for listed drugs that were considered new chemical entities at the time of approval, an ANDA or 505(b)(2) application referencing that drug may not be filed with the FDA until the expiration of five years after approval of that drug, unless the submission is accompanied by a Paragraph IV certification, in which case the applicant may submit its application four years following the original product approval.

A drug, including one approved under Section 505(b)(2), may obtain a three-year period of exclusivity for a particular condition of approval, or change to a marketed product, such as a new formulation for a previously approved product, if one or more new clinical studies (other than bioavailability or bioequivalence studies) was essential to the approval of the application and was conducted/sponsored by the applicant. In addition, drugs approved for diseases for which the patient population is sufficiently small, or orphan indications, are entitled to a seven year data exclusivity period.

Orphan Drugs

Arbaclofen has received Orphan Drug Designation for the alleviation of signs and symptoms of spasticity resulting from multiple sclerosis.

Under the Orphan Drug Act, the FDA may grant orphan drug designation to a drug intended to treat a rare disease or condition, which means a disease or condition that affects fewer than 200,000 individuals in the United States, or affects more than 200,000 individuals in the United States, but for which there is no reasonable expectation that the cost of developing and making the drug available in the United States will be recovered from domestic sales of the product. Orphan drug designation must be requested before submitting an NDA, and both the drug and the disease or condition must meet certain criteria specified in the Orphan Drug Act and FDA's implementing regulations at 21 C.F.R. Part 316. After the FDA grants orphan drug designation, the generic identity of the drug and its potential orphan use are disclosed publicly by the FDA.

Orphan drug designation entitles the applicant to incentives such as grant funding towards clinical study costs, tax advantages, and waivers of FDA user fees. In addition, if a product that has orphan drug designation subsequently receives the first FDA approval for the disease for which it has such designation, the product is also entitled to seven years of orphan drug exclusivity. During the seven-year marketing exclusivity period, the FDA may not approve any other applications to market the same drug for the same disease, except in limited circumstances, such as a showing of clinical superiority to the product with orphan drug exclusivity. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process and a subsequent grant of orphan drug exclusivity does not prevent the FDA from approving a different drug for the same disease or condition, or the same drug for a different disease or condition.

DEA Regulation

Several of our products, including ConZip, methylphenidate ER (including M-72) and hydromorphone ER are regulated as "controlled substances" as defined in the Controlled Substances Act of 1970, as amended, which establishes registration, security, recordkeeping, reporting, storage, distribution and other requirements administered by the DEA. The DEA is concerned with, among other things, the control of handlers of controlled substances and with the equipment and raw materials used in their manufacture and packaging, in order to prevent loss and diversion into illicit channels of commerce.

The DEA regulates controlled substances as Schedule I, II, III, IV or V substances. A pharmaceutical product may be listed as Schedule II, III, IV or V, with Schedule II substances considered to present the highest risk of abuse and Schedule V substances the lowest relative risk of abuse among such substances. Methylphenidate (including methylphenidate ER and M-72) and hydromorphone (including hydromorphone ER) are listed as Schedule II drugs and tramadol hydrochloride (including ConZip) is listed as a Schedule IV drug by the DEA under the Controlled Substances Act. The manufacture, shipment, storage, sale and use of Schedule II drugs are subject to a high degree of regulation. For example, Schedule II drug prescriptions generally must be signed by a physician and may not be refilled without a new prescription. Substances in Schedule IV are considered to have a lower potential for abuse relative to substances in Schedule II. A prescription for controlled substances in Schedule IV may be issued by a practitioner through oral communication, in writing or by facsimile to the pharmacist and may be refilled if so authorized on the prescription or by call-in. In the future, our other potential products may also be listed by the DEA as controlled substances.

Annual registration is required for any facility that manufactures, distributes, dispenses, imports or exports any controlled substance. The registration is specific to the particular location, activity and controlled substance schedule. For example, separate registrations are needed for import and manufacturing, and each registration will specify which schedules of controlled substances are authorized.

The DEA typically inspects a facility to review its security measures prior to issuing a registration. Security requirements vary by controlled substance schedule, with the most stringent requirements applying to Schedule I and Schedule II substances. Required security measures include background checks on employees and physical control of inventory through measures such as cages, surveillance cameras and inventory reconciliations. Records must be maintained for the handling of all controlled substances and periodic reports must be made to the DEA, including, for example, distribution reports for Schedule II controlled substances, Schedule III substances that are narcotics and other designated substances. Reports must also be made for thefts or losses of any controlled substance and authorization must be obtained to destroy any controlled substance. In addition, special authorization and notification requirements apply to imports and exports.

In addition, a DEA quota system controls and limits the availability and production of controlled substances in Schedule II. Distributions of any Schedule II controlled substance must also be accompanied by special order forms, with copies provided to the DEA. The DEA establishes annually an aggregate quota for how much of a Schedule II substance may be produced in total in the United States based on the DEA's estimate of the quantity needed to meet legitimate scientific and medicinal needs. This limited aggregate amount of any particular Schedule II substance that the DEA allows to be produced in the United States each year is allocated among individual companies, who must submit applications annually to the DEA for individual production and procurement quotas. We and our contract manufacturers must receive an annual quota from the DEA in order to produce or procure any Schedule II substance for use in

manufacturing. The DEA may adjust aggregate production quotas and individual production and procurement quotas from time to time during the year, although the DEA has substantial discretion in whether or not to make such adjustments. Our and our contract manufacturers' quota of an active ingredient may not be sufficient to meet commercial demand or complete clinical trials. Any delay or refusal by the DEA in establishing our and our contract manufacturers' quota for controlled substances could delay or stop our clinical trials or product launches, which could have a material adverse effect on our business, financial position and results of operations.

To meet its responsibilities, the DEA conducts periodic inspections of registered establishments that handle controlled substances. Failure to maintain compliance with applicable requirements, particularly as manifested in loss or diversion, can result in enforcement action that could have a material adverse effect on our business, results of operations and financial condition. The DEA may seek civil penalties, refuse to renew necessary registrations or initiate proceedings to revoke those registrations. In certain circumstances, violations could result in criminal proceedings.

Individual states also regulate controlled substances, and we and our contract manufacturers will be subject to state regulation on distribution of these products.

Regulation of Dietary Supplements

The formulation, manufacturing, packaging, labeling, advertising, distribution and sale of dietary supplements, such as our OB Complete family of prescription prenatal dietary supplements, are subject to regulation by multiple federal agencies, including the FDA, the FTC and the Consumer Product Safety Commission.

The Dietary Supplement Health and Education Act of 1994, or DSHEA, amended the FDCA to establish a new framework governing the composition, safety, labeling, manufacturing and marketing of dietary supplements. Generally, under the FDCA, dietary ingredients that were marketed in the United States prior to October 15, 1994 may be used in dietary supplements without first notifying the FDA. "New" dietary ingredients (i.e., dietary ingredients that were not marketed in the United States before October 15, 1994) must be the subject of a new dietary ingredient notification submitted to the FDA unless the ingredient has been "present in the food supply as an article used for food" without being "chemically altered." A new dietary ingredient notification must provide the FDA evidence of a history of use or other evidence of safety establishing that use of the dietary ingredient will reasonably be expected to be safe. A new dietary ingredient notification must be submitted to the FDA at least 75 days before the initial marketing of the new dietary ingredient. The FDA may determine that a new dietary ingredient notification does not provide an adequate basis to conclude that a dietary ingredient is reasonably expected to be safe. Such a determination could prevent the marketing of such dietary ingredient or a dietary supplement including such dietary ingredient.

All facilities that manufacture, process, package, or store food for human consumption, including dietary supplements, must register with the FDA as a food facility under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Facility registrations must be updated biennially. The FDA schedules periodic inspections at registered facilities to determine whether the inspected facilities are in compliance with applicable FDA regulations. The FDA's cGMP regulations for dietary supplements apply to manufacturers and holders of finished dietary supplement products, including dietary supplements manufactured outside the United States that are imported for sale into the United States. Among other things, the FDA's cGMP regulations: (i) require identity testing on all incoming dietary ingredients; (ii) call for a scientifically valid system for ensuring finished products meet all specifications; (iii) include requirements related to process controls, including statistical sampling of finished batches for testing and requirements for written procedures; and (iv) require extensive recordkeeping. The failure of a manufacturing facility to comply with the cGMP regulations renders products manufactured in such facility "adulterated" under the FDCA, and subjects such products and the manufacturer to a variety of potential FDA enforcement actions.

Dietary supplements are also regulated by various state and local governmental agencies. The FTC regulates the advertising of dietary supplements and the National Advertising Division, or NAD, of the Council of Better Business Bureaus oversees an industry sponsored, self-regulatory system that permits competitors to resolve disputes over advertising claims. The NAD has no enforcement authority of its own, but may refer matters to the FTC or the FDA for further action.

Federal agencies, including the FDA and the FTC, have a variety of procedures and enforcement remedies available to them, including initiating investigations, issuing Warning Letters and cease and desist orders, requiring corrective labeling or advertising, requiring consumer redress, seeking injunctive relief or product seizures, imposing civil penalties or commencing criminal prosecution.

Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act, the FDA requires, among other things, that companies that manufacture or distribute dietary supplements report serious adverse events associated with their products to the FDA and fulfill certain recordkeeping requirements for adverse events. Based on serious adverse event (or other) information, the FDA may take actions against dietary supplements or dietary ingredients that in its determination present a significant or unreasonable risk of illness or injury. In addition, the FDA could issue consumer warnings with respect to the products or ingredients in such products.

The FDA Food Safety Modernization Act, or FSMA, enacted on January 4, 2011, amended the FDCA to enhance the FDA's authority over various aspects of food regulation, including dietary supplements. Under the FSMA, the FDA is authorized to issue a mandatory recall when the FDA determines that there is a reasonable probability that a food, including a dietary supplement, is adulterated or misbranded and that the use of, or exposure to, the food will cause serious adverse health consequences or death to humans or animals. Also under the FSMA, the FDA has (i) expanded access to records; (ii) the authority to suspend food facility registrations and require high-risk imported food to be accompanied by a certification; (iii) stronger authority to administratively detain food; (iv) the authority to refuse admission of an imported food if it is from a foreign establishment to which a U.S. inspector is refused entry for an inspection; and (v) the authority to require that importers verify that the foods they import meet domestic standards.

The FSMA requirements may result in the detention and refusal of admission of imported products, the injunction of manufacturing of any dietary ingredients or dietary supplements until the FDA determines that such ingredients or products are in compliance, and the potential imposition of fees for re-inspection of noncompliant facilities.

The FDCA, as amended by the DSHEA, permits statements of nutritional support often referred to as "structure/function claims" to be included in labeling for dietary supplements without FDA premarket approval. FDA regulations require that dietary supplement manufacturers notify the FDA of those statements within 30 days of marketing. Among other things, the statements may describe the role of a dietary ingredient intended to affect the structure or function of the body or characterize the documented mechanism of action by which a dietary ingredient maintains such structure or function, but may not expressly or implicitly represent that a dietary supplement will diagnose, cure, mitigate, treat, or prevent a disease. A company that uses a statement of nutritional support in labeling must possess information substantiating that the statement is truthful and not misleading. If the FDA determines that a particular statement of nutritional support is an unacceptable drug claim or an unauthorized version of a health claim, or if the FDA determines that a particular claim is not adequately supported by available information or is otherwise false or misleading, the claim could not be used and any product bearing the claim could be subject to regulatory action.

The FTC and the FDA have pursued a coordinated effort to investigate the scientific substantiation for dietary supplement claims. Their efforts to date have resulted in a significant number of investigations and enforcement actions. Dietary supplement claims could also be the subject of inquiries from the NAD and states' Attorneys General.

The FDA has broad authority to enforce the FDCA provisions applicable to dietary supplements, including powers to issue a public warning or notice of violation letter to a company, publicize information about illegal products, request a voluntary recall, order a mandatory recall, administratively detain domestic products, detain products offered for import, request the U.S. Department of Justice, or DOJ, to initiate a seizure action, initiate an injunction action or a criminal prosecution in the U.S. courts and administratively revoke manufacturing facility registrations, thereby effectively enjoining manufacturing of dietary ingredients and dietary supplements without judicial process.

States also regulate foods and drugs under laws that generally parallel federal statutes. These products are also subject to state consumer health and safety regulations, such as the California Safe Drinking Water and Toxic Enforcement Act of 1986, or Proposition 65. Violation of Proposition 65 may result in substantial monetary penalties.

Pricing and Reimbursement

Successful commercialization of our products depends, in part, on the availability of governmental and third-party payor reimbursement for the cost of our products. Government authorities and third-party payors increasingly are challenging the price of medical products and services. On the government side, there is a heightened focus, at both the federal and state levels, on cost containment under Medicaid, Medicare and other government benefit programs. For example, we are obligated under the Medicaid drug program to pay rebates on certain utilization of our products, under state Medicaid programs. Many state Medicaid programs have also created preferred drug lists and include drugs on those lists only when the manufacturers agree to pay a supplemental rebate. If our current products or future drug candidates are not included on these preferred drug lists, physicians may not be inclined to prescribe them to their Medicaid patients, thereby diminishing the potential market for our products. The focus on cost containment has also led to an increase in federal and state legislative initiatives related to drug prices, which could significantly influence the purchase of pharmaceutical products, resulting in lower prices and changes in product demand. If enacted, these changes could lead to reduced payments to pharmaceutical manufacturers.

In addition, third-party payors have been imposing additional requirements and restrictions on coverage and limiting reimbursement levels for pharmaceutical products. Third-party payors may require manufacturers to provide them with predetermined discounts from list prices and limit coverage to specific pharmaceutical products on an approved list, or formulary, which might not include all of the FDA-approved pharmaceutical products for particular indications. Third-party payors may challenge the price and examine the medical necessity and cost-effectiveness of pharmaceutical products in addition to their safety and efficacy. Manufacturers may need to conduct expensive pharmaco-economic studies in order to demonstrate the medical necessity and cost-effectiveness of pharmaceutical products in addition to the costs required to obtain the FDA approvals. Adequate third-party reimbursement may not be available to enable manufacturers to maintain price levels sufficient to realize an appropriate return on their investment in drug development.

Healthcare Reform

In the United States, there have been a number of federal and state proposals during the last several years regarding the pricing of pharmaceutical products, government control and other changes to the healthcare system of the United States. It is uncertain what other legislative proposals may be adopted or what actions federal, state, or private payors may take in response to any healthcare reform proposals or legislation. We cannot predict the effect such reforms may have on our business, and no assurance can be given that any such reforms will not have a material adverse effect.

By way of example, in March 2010, the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, or collectively, the ACA, was signed into law, which, among other things, includes changes to the coverage and payment for drug products under government health care programs. The law includes measures that (i) significantly increase Medicaid rebates through both the expansion of the program and significant increases in rebates, (ii) substantially expand the Public Health System (340B) program to allow other entities to purchase prescription drugs at substantial discounts, (iii) extend the Medicaid rebate rate to a significant portion of Managed Medicaid enrollees, (iv) require manufacturers to provide discounts on Medicaid Part D spending in the coverage gap for branded and authorized generic prescription drugs (which discount subsequent legislation increased beginning in 2019), and (v) levy a significant excise tax on the industry to fund the healthcare reform.

Over the past few years, there were ongoing efforts to modify or repeal all or certain provisions of the ACA. For example, tax reform legislation was enacted at the end of 2017 that eliminated the tax penalty established under the ACA for individuals who do not maintain mandated health insurance coverage beginning in 2019. The ACA has also been subject to judicial challenge. The case Texas v. Azar, which challenges the constitutionality of the ACA, including provisions that are unrelated to healthcare reform but were enacted as part of the ACA, was argued before the Supreme Court in November 2020. Pending resolution of the litigation, all of the ACA but the individual mandate to buy health insurance remains in effect.

Beyond the ACA, there have been ongoing health care reform efforts, including a number of recent actions. Some recent healthcare reform efforts have sought to address certain issues related to the COVID-19 pandemic, including an

expansion of telehealth coverage under Medicare and accelerated or advanced Medicare payments to healthcare providers. Other reform efforts affect pricing or payment for drug products. For example, the Medicaid Drug Rebate Program has been subject to statutory and regulatory changes and the discount that manufacturers of Medicare Part D brand name drugs must provide to Medicare Part D beneficiaries during the coverage gap from 50% to 70%. A number of regulations were issued in late 2020 and early 2021. For example, revisions to the federal anti-kickback statute, now effective 2023, would remove protection for traditional Medicare Part D discounts offered by pharmaceutical manufacturers to PBMs and health plans. Some of these changes have been and may continue to be subject to legal challenge. For example, courts temporarily enjoined a new "most favored nation" payment model for select drugs covered under Medicare Part B that was to take effect on January 1, 2021 and would limit payment based on international drug price.

The nature and scope of health care reform in the wake of the transition from the previous administration to the current administration remains uncertain. The Department of Justice under the Biden administration informed the Supreme Court that the government no longer takes the position that the individual mandate is unconstitutional and cannot be severed from the rest of the ACA. President Biden has temporarily halted implementation of new rules issued immediately prior to the transition that had not yet taken effect (which include a number of health care reforms) to allow for review by the new administration. The revisions to the federal anti-kickback statute initially scheduled to take effect in 2022 now take effect in 2023. More generally, President Biden supported reforms to lower drug prices during his campaign for the presidency.

More generally, there has been considerable recent public and government scrutiny in the United States of pharmaceutical pricing and proposals to address the perceived high cost of pharmaceuticals. There have also been several recent state legislative efforts to address drug costs, which generally have focused on increasing transparency around drug costs or limiting drug prices or price increases. Adoption of new legislation at the federal or state level could affect demand for, or pricing of, our product candidates if approved for sale.

We cannot predict the ultimate content, timing or effect of any changes to the ACA or other federal and state reform efforts. There is no assurance that federal or state health care reform will not adversely affect our future business and financial results.

Healthcare Regulations

Pharmaceutical companies are subject to various federal and state laws that are intended to combat health care fraud and abuse and that govern certain of our business practices, especially our interactions with third-party payors, healthcare providers, patients, customers and potential customers through sales and marketing or research and development activities. These include anti-kickback laws, false claims laws, sunshine laws, privacy laws and FDA regulation of advertising and promotion of pharmaceutical products.

Anti-kickback laws, including the federal Anti-Kickback Statute, make it a criminal offense knowingly and willfully to offer, pay, solicit, or receive any remuneration to induce or reward referral of an individual for, or the purchase, order or recommendation of, any good or service reimbursable by, a federal health care program (including our products). The federal Anti-Kickback Statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and patients, prescribers, purchasers and third party payors on the other. Although there are several statutory exceptions and regulatory safe harbors protecting certain common activities from prosecution, the exceptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing or recommending may be subject to scrutiny if they do not qualify for an exception or safe harbor. In addition, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation. Moreover, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act. Violations of the federal Anti-Kickback Statute can result in exclusion from Medicare, Medicaid or other governmental programs as well as civil and criminal fines and penalties of up to $104,330 per violation and three times the amount of the unlawful remuneration. A new federal anti-kickback statute enacted in 2018 prohibits certain payments related to referrals of patients to certain providers (recovery homes, clinical treatment facilities and laboratories) and applies to services

reimbursed by private health plans as well as government health care programs. Criminal sanctions (up to $200,000 fine and ten years imprisonment) can be imposed for violations.

The federal civil and criminal false claims laws, including the civil False Claims Act, prohibit knowingly presenting, or causing to be presented, claims for payment to the federal government (including Medicare and Medicaid) that are false or fraudulent (and, under the Federal False Claims Act, a claim is deemed false or fraudulent if it is made pursuant to an illegal kickback). Manufacturers can be held liable under these laws if they are deemed to "cause" the submission of false or fraudulent claims by, for example, providing inaccurate billing or coding information to customers or promoting a product off-label. Actions under the False Claims Act may be brought by the Attorney General or as a qui tam action by a private individual in the name of the government. Violations of the False Claims Act can result in significant monetary penalties, including fines ranging from $11,665 to $23,331 for each false claim, and treble damages. The federal government is using the False Claims Act, and the accompanying threat of significant liability, in its investigation and prosecution of pharmaceutical companies throughout the country, for example, in connection with the promotion of products for unapproved uses and other improper sales and marketing practices. The government has obtained multi-million and multi-billion dollar settlements under the False Claims Act in addition to individual criminal convictions under applicable criminal statutes. In addition, companies have been forced to implement extensive corrective action plans, and have often become subject to consent decrees or corporate integrity agreements, severely restricting the manner in which they conduct their business. Given the significant size of actual and potential settlements, it is expected that the government will continue to devote substantial resources to investigating healthcare providers' and manufacturers' compliance with applicable fraud and abuse laws.

The Federal Civil Monetary Penalties Law prohibits, among other things, the offering or transferring of remuneration to a Medicare or Medicaid beneficiary that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, supplier or practitioner providing Medicare or Medicaid payable items or services. Noncompliance can result in civil money penalties of up to $20,866 for each wrongful act, assessment of three times the amount claimed for each item or service and exclusion from the federal healthcare programs.

Federal criminal statutes prohibit, among other actions, knowingly and willfully executing or attempting to execute a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. As with the federal Anti-Kickback Statute, the ACA amended the intent standard for certain healthcare fraud statutes, such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

Analogous state and foreign laws and regulations, including state anti-kickback and false claims laws, may apply to products and services reimbursed by non-governmental third-party payors, including commercial payors. Additionally, there are state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or that otherwise restrict payments that may be made by pharmaceutical companies to healthcare providers. There are also state and foreign laws that require drug manufacturers to report marketing expenditures or pricing information.

Sunshine laws, including the federal Open Payments law enacted as part of the ACA, require pharmaceutical manufacturers to disclose payments and other transfers of value made to physicians and certain other health care providers or professionals. Under the federal Open Payments law pharmaceutical manufacturers are required to submit reports annually to the government. Failure to submit the required information may result in civil monetary penalties of up to an aggregate of $176,495 per year (or up to an aggregate of $1,176,638 per year for "knowing failures") for all payments, transfers of value or ownership or investment interests not reported in an annual submission, and may result in liability under other federal laws or regulations. Certain states and foreign governments require the tracking and reporting of gifts, compensation and other remuneration to certain healthcare providers.

Privacy laws, including HIPAA, restrict how entities may use or disclose health information. Under HIPAA, covered entities are defined to include health care providers, such as physicians, hospitals, pharmacies and laboratories, as well as

health insurers. Although pharmaceutical manufacturers are not covered entities under HIPAA, our ability to acquire or use protected health information from covered entities to aid in our research, development, sales and marketing activities may be affected by HIPAA and other privacy laws. HIPAA, was amended by HITECH. Those changes were adopted in regulation through a final omnibus rule published on January 25, 2013. Among other things, HITECH and the omnibus rule made HIPAA's privacy and security standards directly applicable to "business associates," which are defined as contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce HIPAA and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways, thus complicating compliance efforts.

The FDA regulates the sale and marketing of prescription drug products and, among other things, prohibits pharmaceutical manufacturers from making false or misleading statements and from promoting products for unapproved uses. There has been an increase in government enforcement efforts at both the federal and state level. Numerous cases have been brought against pharmaceutical manufacturers under the Federal False Claims Act, alleging, among other things, that certain sales or marketing-related practices violate the Anti-Kickback Statute or the FDA's regulations, and many of these cases have resulted in settlement agreements under which the companies were required to change certain practices, pay substantial fines and operate under the supervision of a federally appointed monitor for a period of years. Due to the breadth of these laws and their implementing regulations and the absence of guidance in some cases, it is possible that our practices might be challenged by government authorities. Violations of fraud and abuse laws may be punishable by civil and criminal sanctions including fines, civil monetary penalties, as well as the possibility of exclusion of our products from payment by federal health care programs.

Government Price Reporting

We must offer discounted pricing or rebates on purchases of pharmaceutical products under various federal and state healthcare programs, such as the Medicaid drug rebate program, the "federal ceiling price" drug pricing program, the 340B drug pricing program and the Medicare Part D Program. We must also report specific prices to government agencies under healthcare programs, such as the Medicaid drug rebate program and Medicare Part B. The calculations necessary to determine the prices reported are complex and we are continually evaluating the methods we use to calculate and report the amounts owed with respect to Medicaid and other government pricing programs. Our calculations are subject to review and challenge by various government agencies and authorities, and it is possible that any such review could result either in material changes to the method used for calculating the amounts owed to such agency or the amounts themselves. Because the process for making these calculations, and our judgments supporting these calculations, involve subjective decisions, these calculations are subject to audit. In the event that a government authority challenges our report of payments, such authority may impose civil and criminal sanctions, which could have a material adverse effect on our business. From time to time we conduct routine reviews of our government pricing calculations. These reviews may have an impact on government price reporting and rebate calculations used to comply with various government regulations regarding reporting and payment obligations.

Many government and third-party payors reimburse the purchase of certain prescription drugs based on a drug's AWP. In the past several years, state and federal government agencies have conducted ongoing investigations of manufacturers' reporting practices with respect to AWP, which they have suggested have led to excessive payments by state and federal government agencies for prescription drugs. We and numerous other pharmaceutical companies have been named as defendants in various state and federal court actions alleging improper or fraudulent practices related to the reporting of AWP.

Drug Pedigree Laws

State and federal governments have proposed or passed various drug pedigree laws which can require the tracking of all transactions involving prescription drugs from the manufacturer to the pharmacy (or other dispensing) level. Companies are required to maintain records documenting the chain of custody of prescription drug products beginning with the

purchase of such products from the manufacturer. Compliance with these pedigree laws requires implementation of extensive tracking systems as well as heightened documentation and coordination with customers and manufacturers. While we fully intend to comply with these laws, there is uncertainty about future changes in legislation and government enforcement of these laws. Failure to comply could result in fines or penalties, as well as loss of business that could have a material adverse effect on our financial results.

Federal Regulation of Patent Litigation Settlements and Authorized Generic Arrangements

As part of the Medicare Prescription Drug Improvement and Modernization Act of 2003, companies are required to file with the FTC and DOJ certain types of agreements entered into between brand and generic pharmaceutical companies related to the settlement of patent litigation or manufacture, marketing and sale of generic versions of branded drugs. This requirement could affect the manner in which generic drug manufacturers resolve intellectual property litigation and other disputes with brand pharmaceutical companies, and could result generally in an increase in private-party litigation against pharmaceutical companies or additional investigations or proceedings by the FTC or other governmental authorities.

Other

The U.S. federal government, various states and localities have laws regulating the manufacture and distribution of pharmaceuticals, as well as regulations dealing with the substitution of generic drugs for branded drugs. Our operations are also subject to regulation, licensing requirements and inspection by the states and localities in which our operations are located or in which we conduct business.

Certain of our activities are also subject to FTC enforcement actions. The FTC also enforces a variety of antitrust and consumer protection laws designed to ensure that the nation’s markets function competitively, are vigorous, efficient and free of undue restrictions. Federal, state, local and foreign laws of general applicability, such as laws regulating working conditions, also govern us.

In addition, we are subject to numerous and increasingly stringent federal, state and local environmental laws and regulations concerning, among other things, the generation, handling, storage, transportation, treatment and disposal of toxic and hazardous substances, the discharge of pollutants into the air and water and the cleanup of contamination. We are required to maintain and comply with environmental permits and controls for some of our operations, and these permits are subject to modification, renewal and revocation by the issuing authorities. Our environmental capital expenditures and costs for environmental compliance may increase in the future as a result of changes in environmental laws and regulations or increased manufacturing activities at any of our facilities. We could incur significant costs or liabilities as a result of any failure to comply with environmental laws, including fines, penalties, third-party claims and the costs of undertaking a clean-up at a current or former site or at a site to which our wastes were transported. In addition, we have grown in part by acquisition, and our diligence may not have identified environmental impacts from historical operations at sites we have acquired in the past or may acquire in the future.

Information about our Executive Officers

Brian Markison, 61, became a director and our Chief Executive Officer in 2016. Mr. Markison has been a healthcare industry advisor to Avista since September 2012 and has more than 30 years of operational, marketing, commercial development and sales experience with international pharmaceutical companies. From July 2011 to July 2012, he served as the President and Chief Executive Officer and member of the board of directors of Fougera Pharmaceuticals Inc., a specialty pharmaceutical company in dermatology that was sold to Sandoz Ltd., the generics division of Novartis AG. Before leading Fougera, Mr. Markison was Chairman and Chief Executive Officer of King Pharmaceuticals, Inc., which he joined as Chief Operating Officer in March 2004. He was promoted to President and Chief Executive Officer later that year and elected Chairman in 2007. Prior to joining King Pharmaceuticals, Inc., Mr. Markison held various senior leadership positions at Bristol-Myers Squibb Company, including President of Oncology, Virology and Oncology Therapeutics Network; President of Neuroscience, Infectious Disease and Dermatology; and Senior Vice President, Operational Excellence and Productivity. He serves as Chairman of the board of Lantheus Holdings, Inc. and is on the board of directors of Avista Healthcare Public Acquisition Corp., National Spine and Pain Centers, LLC and Braeburn

Pharmaceuticals, Inc. He is also a Director of the College of New Jersey. Mr. Markison received a B.S. degree from Iona College.

Tina deVries, Ph.D., 60, became our Executive Vice President, Research & Development in May 2016. Dr. deVries most recently served as the Principal of TM deVries Consulting, LLC from October 2014 to April 2016. From October 2013 to September 2014, she held the position of Vice President of Nonclinical and Clinical Pharmacology at Actavis plc. Dr. deVries previously served as the Vice President of Clinical Pharmacology at Warner Chilcott plc, a specialty pharmaceutical company, from April 1996 until the company was acquired by Actavis in October 2013. Dr. deVries holds a B.S. in Pharmacy and a Ph.D. in Pharmaceutics and Pharmaceutical Chemistry from The Ohio State University.

Andrew Einhorn, 61, became our Chief Financial Officer in September 2017. Mr. Einhorn has more than 15 years of experience in the pharmaceutical industry. From March 2014 to March 2017, Mr. Einhorn served as the Chief Financial Officer of Edge Therapeutics, Inc., a clinical-stage biotechnology company that he joined as Executive Vice President of Corporate Development in May 2013. Prior to that, he was a co-founder, Executive Vice President and Chief Financial Officer at Oceana Therapeutics, Inc. from May 2008 to January 2012. Previously, Mr. Einhorn was a co-founder and Chief Financial Officer of both Esprit Pharma, Inc., from June 2005 to October 2007, and ESP Pharma, Inc., from April 2003 to March 2005. From 1983 to 2003, Mr. Einhorn was an investment banker with Credit Lyonnais Securities, PNC Capital Markets, Chase Securities, Inc., Bankers Trust Company and the Chase Manhattan Bank. Mr. Einhorn is licensed as a Certified Public Accountant in the State of New Jersey and holds a B.S. in Finance and Accounting from The American University.

James Schaub, 39, has served as our Executive Vice President and Chief Operating Officer since 2016. Prior to that he served as Chief Operating Officer, Trigen Laboratories beginning in December 2013. Mr. Schaub previously served as Vice President, M&A of Fougera Pharmaceuticals, Inc. from August 2011 to September 2012. Prior to that, Mr. Schaub spent five years with King Pharmaceuticals, Inc., where he held several commercial roles of increasing responsibility. He joined our company in December 2013. Mr. Schaub holds a B.A. in Economics from Middlebury College and an M.B.A. from Rutgers Business School.

Christopher Klein, 57, became our General Counsel and Secretary in December 2013. Mr. Klein previously served as the General Counsel of Fougera Pharmaceuticals Inc. from August 2011 to September 2012. Prior to his time at Fougera Pharmaceuticals Inc., Mr. Klein spent six years with King Pharmaceuticals, Inc. where he held the position of Deputy General Counsel prior to King Pharmaceuticals, Inc.'s acquisition by Pfizer, Inc. Prior to that, Mr. Klein spent six years in senior legal roles with Bristol-Myers Squibb Company. Mr. Klein holds a B.A. in Biology from Adelphi University, an M.A. in Education from Columbia University and a J.D. from Fordham University.

Employees

As of December 31, 2020, we had a total of 302 full time employees (including 39 employees in Argentina and two employees in Hungary). We have one union employee in Argentina who is subject to a collective bargaining agreement. Otherwise, we have no collective bargaining agreements with our employees and none are represented by labor unions. We consider our current relations with our employees to be good.

Corporate Information

Our principal executive offices are located at 400 Crossing Boulevard, Bridgewater, New Jersey 08807, and our registered office in Ireland is 25-28 North Wall Quay, Dublin 1, Ireland and our telephone number is (908) 809-1300. Our website address is www.osmotica.com.

Available Information

We are subject to the information requirements of the Securities Exchange Act of 1934, or the Exchange Act. We file periodic reports, current reports, proxy statements, and other information with the Securities and Exchange Commission, or SEC. The SEC maintains a website at http://www.sec.gov that contains all of our information that has been filed or furnished electronically with the SEC. We make available free of charge on our website a link to 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 Exchange Act, as soon as reasonably practicable, after such material is electronically filed with, or furnished to, the SEC.

ITEM 1A. RISK FACTORS

This Annual Report on Form 10-K contains forward-looking information based on our current expectations. You should carefully consider the risks and uncertainties described below together with all of the other information contained in this Annual Report on Form 10-K, including our consolidated financial statements and the related notes appearing at the end of this Annual Report on Form 10-K. We have presented the below risks as "Risks related to our business," "Risks related to the development and commercialization of products," "Risks related to our intellectual property rights," "Risks related to our industry," "Risks related to our indebtedness," "Risks related to our ordinary shares," "Risks related to being an Irish corporation listing ordinary shares," "Risks related to taxation" and "General risks." If any of the following risks actually occurs, our business, prospects, operating results and financial condition could suffer materially. The risks described below are not the only risks we face. Additional risks and uncertainties not currently known to us or those we currently view to be immaterial also may materially and adversely affect our business, prospects, operating results or financial condition.

Risks related to our business

Due to our dependence on a limited number of products, our business could be materially adversely affected if one or more of our key products do not perform as well as expected.

We generate a significant portion of our total revenues and gross profit from the sale of a limited number of products. For the years ended December 31, 2020 and 2019, our top ten products by product sales accounted for approximately 95% and approximately 97%, respectively, of our total revenues and a significant portion of our gross profit. Any material adverse developments, including increased competition, pricing pressures or supply shortages, with respect to the sale or use of one or more of these products or our failure to successfully introduce new key products, could have a material adverse effect on our revenues and gross profit. For example, we have experienced significant increased pricing and market share pressure on methylphenidate ER, VERT and Lorzone due to additional market entrants, which we expect to continue.

Upneeq may fail to achieve market acceptance by clinicians and patients, or others in the medical community, and the market opportunity for Upneeq may be smaller than we estimate.

Upneeq may fail to gain market acceptance by clinicians, patients, and others in the medical community. While there are no drugs other than Upneeq currently approved in the United States for the treatment of acquired blepharoptosis in adults, some clinicians may treat blepharoptosis with off-label use of other products or with surgery, or they may not treat the condition at all. Additionally, as the first drug approved for blepharoptosis, we spend significant resources on educating clinicians about the disorder and the impact on patients' lives. Our education efforts may not be sufficient to convince clinicians to prescribe Upneeq for their patients suffering from blepharoptosis.

If Upneeq does not achieve adequate levels of acceptance by clinicians or patients, we will not generate significant product revenues. The degree of market acceptance of Upneeq will depend on a number of factors, including:

- the efficacy and potential advantages of Upneeq compared to alternative treatments, including surgery;
- the price at which we offer Upneeq;

- the clinical indication for which Upneeq is approved;
- the willingness of the target patient population to try new therapies and of clinicians to prescribe these therapies;
- the effectiveness of our marketing and distribution support, and our available resources to support adequate marketing efforts; and
- the timing of market introduction of competitive products.

Our assessment of the potential market opportunity for Upneeq is based on industry and market data that we obtained from industry publications and research, surveys and studies conducted by third parties, some of which we commissioned. Industry publications and third-party research, surveys and studies generally indicate that their information has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. While we believe these industry publications and third-party research, surveys and studies are reliable, we have not independently verified such data. The potential market opportunity for the treatment of acquired blepharoptosis, or droopy eye lid, is difficult to precisely estimate. The results from our physician and patient surveys may be less reflective of the acquired blepharoptosis population as a whole than a survey conducted with a larger sample size. Our estimates of the potential market opportunities for our product candidates include several key assumptions based on our industry knowledge, industry publications, third-party research and other surveys, which may be based on a small sample size or otherwise fail to accurately reflect market opportunities. While we believe that our internal assumptions are reasonable, no independent source has verified such assumptions. If any of our assumptions or estimates, or these publications, research, surveys or studies prove to be inaccurate, then the actual market for Upneeq may be smaller than we expect, and as a result our product revenue may be less than expected. The uncertainty with respect to the future progression of the COVID-19 pandemic and its long-term effects may also adversely impact the accuracy of such estimates and our potential market opportunity for Upneeq.

Upneeq is only available through our pharmacy, RVL Pharmacy, and is a cash only product not covered by any private or government insurance. We control the price for Upneeq which is consistent for all patients. Although we believe this cash only model with consistent pricing is a benefit to patients, the price or distribution model may not be accepted by clinicians or patients and may negatively impact filled prescriptions and sales of Upneeq.

Our decision to establish and dispense Upneeq exclusively through a wholly-owned mail order pharmacy represents a new distribution model for us and has expanded the scope of applicable government regulation and may provoke government scrutiny.

We have made the decision to dispense Upneeq solely through a mail order pharmacy operated by RVL Pharmacy LLC. RVL Pharmacy was established as a wholly-owned subsidiary of RVL Pharmaceuticals, Inc. (formerly RevitaLid, Inc. and the NDA holder of Upneeq), which is our wholly-owned subsidiary commercializing Upneeq. The pharmacy dispenses only Upneeq and operates only on a cash basis (i.e., it does not submit any claims to third party payors for prescriptions filled). We cannot be certain that this business model will be successful. As a pharmacy, RVL Pharmacy is subject to certain regulations that have not historically applied to our operations, including state pharmacy licensure requirements and privacy and data security laws applicable only to health care providers. For example, none of our companies have historically been a covered entity under HIPAA. Going forward, we may make the determination that one or more of our companies, such as RVL Pharmaceuticals, Inc. or RVL Pharmacy, may be a HIPAA covered entity. HIPAA covered entities are subject to comprehensive data privacy, security and breach notification obligations and non-compliance may result in civil money penalties as well as criminal fines and imprisonment. In the United States, numerous federal and state laws and regulations, including state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws and regulations (e.g., Section 5 of the Federal Trade Commission Act), that govern the collection, use, disclosure, and protection of health-related and other personal information could apply to our pharmacy operations. For example, pharmacies licensed under California law are subject to California's Confidentiality of Medical Information Act, CMIA, which places restrictions on the use and disclosure of medical information by providers of health care, including pharmacies, and can impose a significant compliance

obligation on such providers. Violations of the CMIA can result in criminal, civil and administrative sanctions, and the CMIA also provides individuals a private right of action with respect to disclosures of their health information that violate CMIA.

Compliance with data privacy and security laws, rules and regulations could require us to take on more onerous obligations in our contracts, require us to engage in costly compliance exercises, and restrict our ability to collect, use and disclose data. Each of these constantly evolving laws can be subject to varying interpretations. Failure to comply with data protection laws and regulations could result in government investigations and enforcement actions (which could include civil or criminal penalties), fines, private litigation, and/or adverse publicity and could negatively affect our operating results and business. Claims that we have violated individuals' privacy rights, failed to comply with data protection laws, or breached our contractual obligations, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business.

Also, certain pharmacies owned by or closely affiliated with pharmaceutical manufacturers have been subject to government scrutiny in the past. Although we do not expect the pharmacy to submit claims to third party payors and anticipate that patients will be responsible for the costs associated with the product, there can be no assurance that RVL Pharmacy and its relationship to RVL Pharmaceuticals, Inc. will not be subject to government scrutiny. Such scrutiny could result in increased regulatory costs to us or cause us to be the subject of a regulatory investigation or sanctions, which could adversely affect our business, results of operations or financial condition, which would materially harm our business.

Our business may be adversely affected by the ongoing coronavirus outbreak.

In December 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. COVID-19 has since spread to other regions in China and other countries, including the United States, where we have our executive offices and principal operations. Infections and deaths related to COVID-19 have disrupted the United States' healthcare and healthcare regulatory systems. Such disruptions could divert healthcare resources away from, or materially delay the FDA approval with respect to, our clinical trials and product candidates. It is unknown how long these disruptions could continue. Other known and unknown factors caused by COVID-19 could also materially delay our clinical trials that may be required for these or other product candidates, including our ability to recruit and retain patients and principal investigators and site staff who, as healthcare providers, may have heightened exposure to COVID-19 if an outbreak occurs in their geography. Any elongation or de-prioritization of our clinical trials or delay in regulatory review resulting from such disruptions could materially affect the development and/or approval of our product candidates.

The economic impact of COVID-19's spread, which has caused a broad impact globally, such as restrictions on travel and quarantine policies put into place by businesses and governments, may adversely affect us. In particular, we expect that the COVID-19 outbreak will negatively affect demand for our products by limiting the ability of our sales representatives to meet with physicians and patients to visit their doctors and pharmacists to receive prescriptions for our products. Specifically, we expect that our in-person sales and marketing efforts for Upneeq may be negatively impacted by the COVID-19 outbreak as patients de-prioritize or delay non-critical physician visits and procedures, such as those related to eye care.

We have experienced increased demand for certain of our products as customers increase stock as a precautionary measure during the pandemic. We expect that this stockpiling of our product will result in decreased demand for our products in the future as customers use their higher inventory as opposed to placing new customer orders or filing new prescriptions. We have increased inventory of one of our products to avoid supply issues if our contract manufacturer is unable to operate due to the pandemic. If demand for the product does not increase or maintain at a certain level we may be forced to write off product that becomes outdated.

Additionally, while the potential economic impact brought by, and the duration of, COVID-19 may be difficult to assess or predict, the pandemic has resulted in and could continue to result in significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity and our ability to execute on our strategic plans.

The extent to which the COVID-19 pandemic impacts our results will depend on future developments that are highly uncertain and cannot be predicted. We cannot reasonably estimate the length or severity of the COVID-19 pandemic or the related mitigation efforts, including the length of time it may take for normal economic and operating conditions to resume or the extent to which the disruption may materially impact our business, financial position, results of operations or cash flows.

If we determine that our goodwill and other intangible assets have become impaired, we may record significant impairment charges, which would adversely affect our results of operations.

Goodwill and other intangible assets represent a significant portion of our assets. Goodwill is the excess of cost over the fair market value of net assets acquired in business combinations. In the future, goodwill and intangible assets may increase as a result of future acquisitions. We review our goodwill, indefinite lived intangible assets and definite lived intangible assets at least annually for impairment. Impairment may result from, among other things, deterioration in the performance of acquired businesses, adverse market conditions and adverse changes in applicable laws or regulations, including changes that restrict the activities of an acquired business. Any impairment of goodwill or other intangible assets would result in a non-cash charge against earnings, which would adversely affect our results of operations. For example, we incurred charges for impairments of intangible assets of $49.0 million during the fourth quarter of 2020, primarily related to the write-off to fair value of venlafaxine due to lower revenue due to generic competition and a write down to fair value of arbaclofen ER due to a delay in the anticipated commercialization date, if approved. For the year ended December 31, 2020, we recorded non-cash impairment charges of $72.2 million related to adjustments to the forecasted operating results for certain of our acquired generic, developed technology, product and distribution rights compared to their originally forecasted operating results at the date of acquisition.

In certain circumstances, we issue price adjustments and other sales allowances to our customers, including providing lower pricing to underinsured or non-insured patients. If our estimates for these price adjustments are incorrect, any reserves which we establish for these programs may be inadequate, and may result in adjustments to these reserves or otherwise have a material adverse effect on our financial position and results of operations.

For some of our products, we enjoy a period of time during which we may be the only party, or one of a small number of parties, marketing and selling a certain product. This might be seen more often with one of our brand products, but may also occur in instances where we are one of a small number of parties selling a generic product. At some point other parties, selling either a competitive brand or generic product, may enter the market and compete for customers and market share resulting in a significant price decline for our drug. When we experience price declines following a period of marketing exclusivity or semi-exclusivity, or at any time when a competitor enters the market or offers a lower price with respect to a product we are selling, we may decide to lower the price of our product to retain market share. As a result of lowering prices, we may provide price adjustments to our customers for the difference between our new (lower) price and the price at which we previously sold the product which is still held in inventory by our customers, which is known as a shelf stock adjustment. While we do establish reserves for shelf stock adjustments, if actual shelf stock adjustments differ from our estimates, our operating results could be negatively affected. There are also circumstances under which we may decide not to provide price adjustments to certain customers, and consequently, as a matter of business strategy, we may risk a greater level of sale returns of products in the customer’s existing inventory and lose future sales volume to competitors rather than reduce our pricing.

We establish reserves for chargebacks, rebates and incentives, other sales allowances and product returns at the time of sale, based on estimates. Separately, these same reserves may be used to support a patient assistance program. A patient assistance program is a program designed to improve patient access to products by reducing barriers to access caused by potentially high out-of-pocket expenses for patients. The program assists under-insured or non-insured patients by helping to defray their out-of-pocket costs, in some cases entirely. Our estimates on the number of participants for the patient assistance program or other similar programs, currently or in the future, may affect the adequacy of our reserves. Although we believe our processes for estimating reserves are adequate, we cannot provide assurances that our reserves will ultimately prove to be adequate. Increases in sales allowances may exceed our estimates for a number of reasons, including unanticipated competition or an unexpected change in one or more of our contractual relationships. We will continue to evaluate the effects of competition and will record a price adjustment reserve if and when we deem it

necessary. Any failure to establish adequate reserves with respect to sales allowances may result in a material adverse effect on our financial position and results of operations.

Rebates include mandated discounts under the Medicaid Drug Rebate Program, Medicare Part D Prescription Drug Benefit Program and TRICARE Retail Pharmacy Refunds Program (TRICARE). Rebates are amounts owed after the final dispensing of the product to a benefit plan participant and are based upon contractual agreements or statutory requirements with benefit providers. We estimate the allowance for rebates based on statutory discount rates and expected utilization at the time of sale. We adjust the allowance for rebates quarterly to reflect actual experience. If we change the way rebates are applied or calculated, it may impair our ability to accurately accrue for rebates and have a material adverse effect on our financial position and results of operations. See "Risks Related to Our Industry — Our profitability depends on coverage and reimbursement by governmental authorities, managed care organizations, or MCOs, and other third-party payors; healthcare reform and other future legislation creates uncertainty and may lead to reductions in coverage or reimbursement levels."

We may incur operating losses in the future.

Our net loss was $79.6 million for the year ended December 31, 2020. Our operating results may fluctuate significantly from quarter to quarter and year to year.

We devote significant amounts of financial resources to the manufacture, marketing and commercialization of our approved products, and support of our research and development of our clinical and preclinical programs. We may incur significant expenses in the future. Some of these expenses will be made in connection with our ongoing activities, as we:

- launch new products into the marketplace;
- conduct clinical trials and seek regulatory approval for arbaclofen ER and additional indications for Upneeq;
- continue development of our pipeline product candidates;
- conduct preclinical studies for product candidates;
- add personnel to support our marketing, commercialization and sales of approved products, including Upneeq, and continue clinical and preclinical product development efforts;
- continue our research and development efforts for new product opportunities, including business development and acquisitions; and
- operate as a public company.

To become profitable, we must succeed in developing or acquiring products, obtaining regulatory approval for them, and manufacturing, marketing and selling those products for which we may obtain regulatory approval. Even if we achieve profitability for any period in the future, we may not be able to sustain profitability in subsequent periods. Our failure to become profitable would depress our market value and could impair our ability to raise capital, expand our business, discover or develop other products or continue our operations. A decline in the value of our company could cause you to lose all or part of your investment.

Our profitability depends on our major customers. If these relationships do not continue as expected, including as a result of the continuing trend of consolidation of certain customer groups, our business, financial condition, prospects and results of operations could materially suffer.

As of December 31, 2020, we had approximately 55 customers, some of which are part of larger buying groups. Our three largest customers accounted for approximately 94% of our total revenues for the year ended December 31, 2020, as follows: Cardinal Health, Inc. 20%; McKesson Corporation 43%; and AmerisourceBergen Corporation 31%. The loss of

any one or more of these or any other major customer or the substantial reduction in orders from any one or more of our major customers could have a material adverse effect upon our business, prospects, future operating results and financial condition.

Our ability to successfully commercialize any generic or branded product depends in large part upon the acceptance of the product by third parties, including pharmacies, government formularies, other retailers, physicians and patients. Therefore, our success will depend in large part on market acceptance of our products. We make a significant amount of our sales to a relatively small number of drug wholesalers and retail drug chains. These customers represent an essential part of the distribution chain of our pharmaceutical products. Drug wholesalers and retail drug chains have undergone, and are continuing to undergo, significant consolidation. This consolidation may result in these groups gaining additional purchasing leverage and consequently increasing the product pricing pressures facing our business. Additionally, the emergence of large buying groups representing independent retail pharmacies and other drug distributors, and the prevalence and influence of MCOs and similar institutions, potentially enable those groups to demand larger price discounts on our products. For example, there has been a recent trend of large wholesalers and retailer customers forming partnerships, such as the alliance between Walgreens and AmerisourceBergen Corporation, the alliance between Rite Aid and McKesson Drug Company and the alliance between CVS and Cardinal Health. The result of these developments may have a material adverse effect on our business, financial condition and results of operations.

Our branded pharmaceutical expenditures may not result in commercially successful products.

Commercializing branded products is more costly than generic products. We have made significant investments in the development, launch and commercialization of branded products. This has led to increased infrastructure costs. We cannot be certain that these business expenditures will result in the successful development or launch of branded products or will improve the long-term profitability of our business. Just as our generic products take market share from the corresponding branded products, we will confront the same competitive pressures from other generic pharmaceutical companies that may seek to introduce generic versions of our branded products. Generic products generally are sold at a significantly lower cost than the branded version, and, where available, may be required or encouraged in preference to the branded version under third-party reimbursement programs, or may be required by law to be substituted for branded versions by pharmacies. Competition from generic equivalents, accordingly, could have an adverse effect on our branded products. While we have endeavored (with our relevant development and manufacturing partners, as applicable) to protect our branded assets by incorporating specialized manufacturing processes and by securing regulatory exclusivities and intellectual property protections, such exclusivities and protections are subject to expiry and to legal challenges.

We continue to consider product or business acquisitions or licensing arrangements to expand our product line. The success of our branded products will be based largely on the successful commercialization of our existing products, the identification of products for acquisition or future development and the acquisition or in-licensing of new product opportunities. Our current and future investments in acquisition or license arrangements may not lead to expected, adequate or any returns on investment. We also may not be able to execute future license or acquisition agreements on reasonable or favorable terms in order to continue to grow or sustain our branded products. In addition, we cannot be certain that our branded product expenditures will result in commercially successful launches of these products or will improve the long-term profitability of our branded products. Any future commercialization efforts that do not meet expectations could result in a write-down of assets related to the relevant products.

We may discontinue the manufacture and distribution of certain existing products, which may adversely impact our business, results of operations and financial condition.

We continually evaluate the performance of our products, and may determine that it is in our best interest to discontinue the manufacture and distribution of certain of our products for various reasons, including commercial, regulatory, strategic or other reasons. We cannot guarantee that we have correctly forecasted, or will correctly forecast in the future, the appropriate products to discontinue or that our decision to discontinue various products is prudent if conditions, including market conditions, change. In addition, we cannot assure you that discontinuing one or more products will reduce our operating expenses or will not cause us to incur material charges associated with such a decision. Furthermore, discontinuing one or more existing products entails various risks, including, in the event that we decide to sell the discontinued product, the risk that we will not be able to find a purchaser for such products or that the purchase

price obtained will not be equal to at least the book value of the net assets for such products. Other risks include managing the expectations of, and maintaining good relations with, our customers who previously purchased products that we subsequently discontinued, which could prevent us from selling other products to them in the future. Moreover, we may incur other significant liabilities and costs associated with discontinuing one or more of our products, which could have a material adverse effect on our business, results of operations and financial condition.

We face intense competition from both brand and generic companies, including companies that sell branded generics or authorized generics, which could significantly limit our growth and materially adversely affect our financial results.

The pharmaceutical industry is highly competitive. The principal competitive factors in the pharmaceutical industry include:

- introduction of other brand or generic drug manufacturers' products in direct competition with our products;
- introduction of authorized generic products in direct competition with our products, particularly during exclusivity periods;
- ability of generic competitors to quickly enter the market after the expiration of patents or exclusivity periods, diminishing the amount and duration of significant profits;
- consolidation among distribution outlets through mergers and acquisitions and the formation of buying groups;
- the willingness of our customers, including wholesale and retail customers, to switch among products of different pharmaceutical manufacturers;
- pricing pressures by competitors and customers;
- a company's reputation as a manufacturer and distributor of quality products;
- a company's level of service (including maintaining sufficient inventory levels for timely deliveries);
- product appearance and labeling; and
- a company's breadth of product offerings.

We face, and will continue to face, competition from pharmaceutical, biopharmaceutical, biotechnology and dietary supplement companies developing similar products and technologies. Many of our competitors have longer operating histories and greater financial, research and development, marketing and other resources than we do. Consequently, many of our competitors may be able to develop products or processes competitive with, or superior to, our own. Furthermore, we may not be able to differentiate our products from those of our competitors, to successfully develop or introduce new products, on a timely basis or at all, that are less costly than those of our competitors, or to offer payment and other commercial terms to customers as favorable as those offered by our competitors. The markets in which we compete and intend to compete are undergoing, and are expected to continue to undergo, rapid and significant change. We expect competition to intensify as technological advances and consolidations continue. New developments by other manufacturers and distributors could render our products uncompetitive or obsolete.

We also face price competition generally as other manufacturers enter the market. Any such price competition may be especially pronounced where our competitors source their products from jurisdictions where production costs may be lower than our production costs (sometimes significantly), especially lower-cost non-U.S. jurisdictions. Any of these factors, in turn, could result in reductions in our sales prices and gross profit. This price competition has led to an increase in customer demands for downward price adjustments by pharmaceutical distributors. There can be no

assurance that we will be able to compete successfully in the industry or that we will be able to develop and implement any new or additional strategies successfully.

Some of our products, including VERT and Divigel, are reference listed drugs. Manufacturers may seek approval of generic versions of our reference listed drugs through the submission of ANDAs. In order to obtain approval of an ANDA, a generic manufacturer generally must show that its product has the same active ingredient(s), dosage form, strength, route of administration, conditions of use and labeling as the reference listed drug, and that the generic version is bioequivalent to the reference listed drug, meaning that it is chemically identical and is absorbed in the body at the same rate and to the same extent. An ANDA applicant need not conduct its own clinical trials to demonstrate the safety or effectiveness of its generic product, but instead may rely on the prior findings of safety and effectiveness for the reference listed drug. As a result, generic products may be significantly less costly to bring to market than reference listed drugs, and companies that produce generic products are generally able to offer them at lower prices. Moreover, many states allow or require substitution of a therapeutically equivalent generic drug at the pharmacy level even if a reference listed drug is prescribed. Thus, following the introduction of a generic drug, a significant percentage of the market share of a reference listed drug may be lost to the generic product. Competition from generic versions of our products could negatively impact our future total revenues, profitability and cash flows. For example, methylphenidate ER tablets, VERT and Lorzone have experienced, and are expected to continue to experience, significant pricing erosion due to additional competition from other generic pharmaceutical companies.

Competition in the generic drug industry has also increased due to the proliferation of authorized generic pharmaceutical products. Authorized generics are generic pharmaceutical products that are introduced by brand companies, either directly or through third parties, under the brand's NDA approval for its own branded drug. Authorized generics, which have already been approved for marketing under the brand's NDA, are not prohibited from sale during the 180-day marketing exclusivity period granted to the first-to-file ANDA applicant. The sale of authorized generics adversely impacts the market share of a generic product that has been granted 180 days of marketing exclusivity. This is a significant source of competition for companies that have been granted 180 days of marketing exclusivity, because an authorized generic can materially decrease the profits that such a company could receive as an otherwise exclusive marketer of a product. Branded drug product companies may also reduce the price of their branded drug products to compete directly with generic drug products entering the market, which would similarly have the effect of reducing gross profit. Such actions have the effect of reducing the potential market share and profitability of generic products and may inhibit the development and introduction of generic pharmaceutical products corresponding to certain branded drugs.

Approximately 70% and 77% of our net product sales for the years ended December 31, 2020 and 2019, respectively, were generated by our generic products. Our future profitability depends, in part, upon our ability to introduce, on a timely basis, new generic products. The timeliness of our product introductions is dependent upon, among other things, the timing of regulatory approval of our products, which to a large extent is outside of our control, as well as the timing of competing products. As additional suppliers introduce comparable generic pharmaceutical products, price competition intensifies, market access narrows and product sales prices and gross profit decline, often significantly and rapidly.

As our competitors introduce their own generic equivalents of our generic pharmaceutical products, our revenues and gross profit from such products generally decline, often rapidly.

Revenues and gross profit derived from generic pharmaceutical products often follow a pattern based on regulatory and competitive factors that we believe are unique to the generic pharmaceutical industry. As the patent for a brand name product or the statutory marketing exclusivity period (if any) expires, the first generic manufacturer to receive regulatory approval for a generic equivalent of the product often is able to capture a substantial share of the market. However, as other generic manufacturers receive regulatory approvals for their own generic versions, that market share and the price of that product will typically decline depending on several factors, including the number of competitors, the price of the branded product and the pricing strategy of the new competitors. For example, our revenues from methylphenidate ER declined 57% for the year ended December 31, 2020 compared to the year ended December 31, 2019 due to price erosion as result of generic competition from other pharmaceutical companies. Additionally, we are experiencing, and expect to continue to experience, significant price and market pressure on VERT and Lorzone, which experienced 66% and 74% revenue declines over the same period, respectively. We cannot provide assurance that the number of

competitors with such products will not increase to such an extent that we may stop marketing a product for which we previously obtained approval, which may have a material adverse impact on our total revenues and gross profit.

A business interruption at our manufacturing facility in Marietta, Georgia, our warehouses in Sayreville, New Jersey and Tampa, Florida, our pharmacy in Sayreville, New Jersey or at facilities operated by third parties that we rely on, could have a material adverse effect on our business, financial condition and results of operations.

All of the products that we manufacture are produced at our manufacturing facility in Marietta, Georgia, and our inventory passes through our warehouses in Sayreville, New Jersey and Tampa, Florida. Upneeq is distributed to patients through our pharmacy, RVL Pharmacy, in Sayreville, New Jersey. These facilities, or the facilities of third parties that we rely on for the development, supply, marketing or distribution of raw materials or finished products, including Nephron Pharmaceuticals' facility in South Carolina, which we rely upon for the manufacture of Upneeq, could be subject to earthquakes, power shortages, telecommunications failures, floods, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics and other natural or man-made disasters or business interruptions. For example, the ongoing COVID-19 outbreak has resulted in increased travel restrictions and may result in extended shutdown of our facilities or certain of our suppliers' businesses, which may negatively affect our suppliers' operations. These or any further political or governmental developments or health concerns in countries in which we or our suppliers operate could result in social, economic and labor instability, which could have a material adverse effect on the continuity of our business, including with respect to the availability of raw materials for production. A significant disruption at any of these facilities, even on a short-term basis, could impair our ability to produce and ship products to the market on a timely basis, which could have a material adverse effect on our business, financial condition and results of operations.

We depend to a large extent on third-party suppliers and distributors for the raw materials for our products, particularly the chemical compounds comprising the API used in our products, as well as suppliers and distributors for certain finished goods. A prolonged interruption in the supply of such products could have a material adverse effect on our business, financial position and results of operations.

We purchase raw materials, including API, and finished goods from both U.S. and non-U.S. companies. If we experience supply interruptions or delays, we may have to obtain substitute materials or products, which in turn would require us to obtain amended or additional regulatory approvals, subjecting us to additional expenditures of significant time and resources. We may source raw materials or API from a single source, which increases the risk to our business if supply from that source is interrupted. For example, Orion Corporation is our only supplier of Divigel and Nephron Pharmaceuticals Corporation is our only supplier of Upneeq. We also contract with third parties to distribute finished products, including Lannett Company, Inc. for oxybutynin ER and nifedipine ER.

Further, third parties with whom we have agreements may allege that we have failed to perform our obligations under such agreements and we may become involved in lawsuits or other proceedings related to such agreements. If any dispute with a third-party supplier or distributor were determined adversely to us, it could have a material adverse effect on our business, financial position and results of operations.

In addition, changes in our raw material suppliers, including suppliers of API, could result in significant delays in production, higher raw material costs and loss of sales and customers, because regulatory authorities must generally approve raw material sources for pharmaceutical products, which may be time consuming. Any significant supply interruption could have a material adverse effect on our business, research and development programs, financial condition, prospects and results of operations. Because the federal drug approval application process requires specification of raw material suppliers, if raw materials from a specified supplier were to become unavailable, FDA approval of a new supplier may be required. A delay in the manufacture and marketing of the drug involved while a new supplier becomes approved by the FDA and its manufacturing process is determined to meet FDA standards could, depending on the particular product, have a material adverse effect on our results of operations and financial condition. Generally, we attempt to mitigate the potential effects of any such situation by providing for, where economically and otherwise feasible, two or more suppliers of raw materials for the drugs that we manufacture. In addition, we may attempt to enter into a contract with a raw material supplier in an effort to ensure adequate supply for certain of our products.

We depend on third-party agreements for a portion of our product offerings and product candidates, including certain key products, and any failure to maintain these arrangements or enter into similar arrangements with new partners could result in a material adverse effect.

A component of our business model involves entering into a variety of third-party agreements covering a combination of joint development, supply, marketing and distribution of products. For example, we rely on a variety of third parties for the development and supply of API for products that we manufacture at our manufacturing facility in Marietta, Georgia. For the year ended December 31, 2020, 32% of our total revenues were generated from products manufactured under contract or under license. We cannot provide assurance that the development, manufacturing or supply efforts of our contractual partners will continue to be successful, that we will be able to maintain or renew such agreements or that we will be able to enter into new agreements for additional products. These third parties may also exercise their rights to terminate these agreements or may fail to perform their obligations as required under these agreements. Alternatives for some of these agreements may not be easily available.

Any alteration to or termination of our current distribution and marketing agreements, any failure to enter into new and similar agreements, any disputes regarding our manufacturing agreements with third parties, whether or not such disputes result in litigation, any failure to fulfill obligations by a third party, or any other interruption of our product supply under the distribution and marketing agreements, could materially adversely affect our business, financial condition, prospects and results of operations.

If we are unable to develop or maintain our sales capabilities, we may not be able to effectively market or sell our products, including Upneeq.

For the years ended December 31, 2020 and 2019, we spent $36.3 million and $50.0 million, respectively, on sales and marketing. We face a number of additional risks in developing or maintaining internal sales and marketing capabilities, including:

- not being able to attract talented and qualified personnel to build an effective marketing or sales force capability, or not be able to attract personnel with sufficient experience in marketing to the physicians and pharmacies in the eye care space;
- the cost of establishing a marketing and sales force capability may not be justified in light of the total revenues generated from our products;
- our direct sales and marketing efforts for Upneeq may not be successful; and
- our virtual sales and marketing efforts for our other products may not be successful.

If we are unable to establish or maintain adequate sales and marketing capabilities or are unable to do so in a timely manner, our ability to generate revenues and profits from our products will be limited and this could have a material adverse effect on our business, financial position and results of operations.

As we gain approval and launch new products, including Upneeq, we will invest in expanding our sales and marketing organization into new areas such as eye care. In 2020, we established our sales and marketing infrastructure for the commercial launch of Upneeq and the distribution of Upneeq directly to patients through RVL Pharmacy. As a company we have limited experience in the sales, marketing and distribution of ophthalmic products. We are currently expanding our sales force and increasing the number of managers and sales people with eye care experience.

There are risks involved with establishing, maintaining and expanding our own sales, marketing and distribution capabilities. For example, recruiting and training a sales force is expensive and time-consuming and could delay any future product launch. Further, we may underestimate the size of the sales force required for successful commercialization of Upneeq and may need to expand our sales force earlier and at a higher cost than we anticipated. If the commercial success of Upneeq is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

Factors that may inhibit our efforts to commercialize Upneeq on our own include:

- our inability to recruit, train and retain adequate numbers of effective eye care sales and marketing personnel;
- the inability of sales personnel to obtain access to clinicians, including as a result of limitation on office visits as a result of COVID-19 or other health concerns, or persuade adequate numbers of clinicians to prescribe Upneeq; and
- unforeseen costs and expenses associated with maintaining and expanding an independent sales, marketing and pharmacy organization.

Our future success depends on our ability to attract and retain key employees and consultants.

Our future success depends, to a substantial degree, upon the continued service of the key members of our management team. The loss of the services of key members of our management team, including Brian Markison, Tina deVries, Andrew Einhorn and James Schaub, or their inability to perform services on our behalf could have a material adverse effect on our business, financial condition, prospects and results of operations. Our success also depends, to a large extent, upon the contributions of our sales, marketing, scientific and quality assurance staff. We compete for qualified personnel against other brand and generic pharmaceutical manufacturers that may offer more favorable employment opportunities. If we are not able to attract and retain the necessary personnel to accomplish our business objectives, we could experience constraints that would adversely affect our ability to sell and market our products effectively and to support our research and development programs. In particular, sales and marketing efforts depend on the ability to attract and retain skilled and experienced sales, marketing and quality assurance representatives. Although we believe that we have been successful in attracting and retaining skilled personnel in all areas of our business, we cannot provide assurance that we can continue to attract, train and retain such personnel. Any failure in this regard could limit our ability to generate sales and develop or acquire new products.

Any acquisitions we may undertake in the future involve numerous risks, including the risks that we may be unable to integrate the acquired products or businesses successfully and that we may assume liabilities that could adversely affect us.

We may acquire products or businesses. For example, in October 2017, we acquired the rights to RVL-1201, which has since been approved by the FDA as Upneeq, the first approved non-surgical treatment for acquired blepharoptosis in adults. Acquisitions involve numerous risks, including operational risks associated with the integration of acquired businesses or products. These risks include, but are not limited to:

- difficulties in achieving identified revenue synergies, growth opportunities, operating synergies and cost savings;
- difficulties in assimilating the personnel, operations and products of an acquired company, and the potential loss of key employees;
- difficulties in consolidating information technology platforms, business applications and corporate infrastructure;
- difficulties in integrating our corporate culture with local customs and cultures;
- possible overlap between our products or customers and those of an acquired entity that may create conflicts in relationships or other commitments detrimental to the integrated businesses;
- difficulties in obtaining approval from governmental authorities such as the Federal Trade Commission, or FTC;

- our inability to achieve expected total revenues and gross profit for any products we may acquire;
- possible contingent liability that includes, among others, known or unknown environmental, patent or product liability claims;
- the diversion of management's attention from other business concerns; and
- risks and challenges of entering or operating in markets in which we have limited or no prior experience, including the unanticipated effects of export controls, exchange rate fluctuations, foreign legal and regulatory requirements, and political and economic conditions.

In addition, non-U.S. acquisitions involve numerous additional risks, including those related to the potential absence or inadequacy of policies and procedures sufficient to assure compliance by a non-U.S. entity with U.S. regulatory and legal requirements. There can be no assurance that we will not be subject to liability arising from conduct which occurred prior to our acquisition of any entity.

We incur significant transaction costs associated with our acquisitions, including substantial fees for investment bankers, attorneys, and accountants. Any acquisition could result in our assumption of unknown or unexpected, and potentially material, liabilities. Additionally, in any acquisition agreement, the negotiated representations, warranties and agreements of the selling parties may not entirely protect us, and liabilities resulting from any breaches may not be subject to indemnification by the suing parties and could exceed negotiated indemnity limitations. These factors could impair our growth and ability to compete, divert resources from other potentially more profitable endeavors, or otherwise cause a material adverse effect on our business, financial condition and results of operations.

The financial statements of the companies we have acquired or may acquire in the future are prepared by management of such companies and are not independently verified by our management. In addition, any pro forma financial statements prepared by us to give effect to such acquisitions may not accurately reflect the results of operations of such companies that would have been achieved had the acquisition of such entities been completed at the beginning of the applicable financial reporting periods. Finally, we cannot guarantee that we will continue to acquire businesses at valuations consistent with our prior acquisitions or that we will complete acquisitions at all.

We may make acquisitions of, or investments in, complementary businesses or products, which may be on terms that may not turn out to be commercially advantageous, may require additional debt or equity financing, and may involve numerous risks, including those set forth above. We may also divest assets, which may not be commercially advantageous.

We regularly review the potential acquisition of technologies, products, product rights and complementary businesses and are currently evaluating, and intend to continue to evaluate, potential product and company acquisitions and other business development opportunities. We may choose to enter into such transactions at any time. Nonetheless, we cannot provide assurance that we will be able to identify suitable acquisition or investment candidates. To the extent that we do identify candidates that we believe to be suitable, we cannot provide assurance that we will be able to reach an agreement with the selling party or parties, that the terms we may agree to will be commercially advantageous to us, or that we will be able to successfully consummate such investments or acquisitions even after definitive documents have been signed. If we make any acquisitions or investments, we may finance such acquisitions or investments through our cash reserves, debt financing (such as borrowings available to us under our senior secured credit facilities, including our revolving credit facility), which may increase our leverage, or by issuing additional equity securities, which could dilute the holdings of our then-existing shareholders. If we require financing, we cannot provide assurance that we will be able to obtain any required financing when needed on acceptable terms or at all. In addition, we may divest certain of our assets. Such divestitures may not be on favorable terms and the proceeds from such divestitures may not outweigh the benefits such divested assets could have provided to our business.

There is no certainty that we will be able to execute on any strategic alternatives to maximize shareholder value.

On November 10, 2020, we and our board of directors announced that we were undertaking a comprehensive review of strategic options to maximize shareholder value. The options under consideration include divestitures of non-strategic assets, re-financings, commercialization or collaboration agreements. There can be no assurance that this comprehensive review process will result in a transaction, or that if a transaction does occur, that it will successfully enhance shareholder value. Our cash position, net of all liabilities, limits our attractiveness to potential merger candidates and the value that we may receive in such merger, joint venture, partnership, or other business combination scenarios may be less than our current market value.

The process of exploring strategic options could adversely impact our business, financial condition and results of operations. We could incur substantial expenses associated with identifying, evaluating, and executing on potential strategic alternatives, including those related to equity compensation, severance pay and insurance, legal, accounting and financial advisory fees. In addition, the process may be time consuming and disruptive to our business operations, could divert the attention of management and the board of directors from our business, could negatively impact our ability to attract, retain and motivate key employees, and could expose us to potential litigation in connection with this process or any resulting transaction. Further, speculation regarding any developments related to the review and execution of strategic alternatives and perceived uncertainties related to our future could cause our share price to fluctuate significantly.

Risks related to the development and commercialization of products

If we are unable to successfully develop or commercialize new products, or to do so on a timely or cost-effective basis, or to extend life cycles of existing products, our operating results will suffer.

Developing and commercializing a new product is time consuming and costly and is subject to numerous factors that may delay or prevent development and commercialization. Our future results of operations will depend to a significant extent upon our ability to successfully gain FDA approval of and commercialize new products in a timely and cost-effective manner, especially new branded products as we shift from focusing on generic to branded products. There are numerous difficulties in developing and commercializing new products, including:

- the ability to develop products in a timely and cost-effective manner and in compliance with regulatory requirements;
- the success of the pre-clinical and clinical testing processes to assure that new products are safe and effective or chemically identical and bioequivalent to the branded reference listed drug;
- the risk that any of our products presently under development, if and when fully developed and tested, will not perform as expected;
- delays or unanticipated costs, including delays associated with the completion of clinical trials for our branded products;
- delays associated with FDA registration, listing and approval processes and the ability to obtain in a timely manner, and maintain, required regulatory approvals;
- legal actions against our generic products brought by brand competitors, and legal challenges to our branded products or branded product intellectual property;
- the availability, on commercially reasonable terms, of raw materials, including API and other key ingredients;
- our ability to scale-up manufacturing methods to successfully manufacture commercial quantities of products in compliance with regulatory requirements; and

- acceptance of our products by physicians, patients, payors and the healthcare community.

As a result of these and other difficulties, products currently in development may or may not receive necessary regulatory approvals on a timely basis or at all and we may not succeed in effectively managing our development costs. Further, if we are required by the FDA or any equivalent foreign regulatory authority to complete clinical trials in addition to those we currently expect to conduct, or to repeat a clinical trial that has already been completed, or if there are any delays in completing preclinical studies, filing an IND or completing clinical trials, our expenses could increase.

This risk exists particularly with respect to the introduction of new branded products as we continue our shift away from focusing on generic markets. NDAs for branded products are subject to uncertainties, higher costs and lengthy time frames associated with research and development of such products and the inherent unproven market acceptance of such products. For example, in December 2020 we received a complete response letter, or CRL, from the FDA in connection with our NDA for arbaclofen ER for the treatment of multiple sclerosis patients with spasticity. In the CRL, FDA recommended that we conduct a new study in order to provide substantial evidence of efficacy of arbaclofen. On March 4, 2021, we participated in a meeting with the FDA during which we explored selective review of the currently available data and options for a path forward for FDA approval, including conducting another clinical study. The FDA's review, as well as any subsequent clinical testing, could delay or prevent the commercial launch of arbaclofen ER and increase our operating expenses, including the expenses associated with any additional clinical trials for arbaclofen ER, which could have a material adverse effect on our business, financial position and results of operations. If we are unable or delayed in our attempts to develop and commercialize branded products successfully, we may have to rely primarily on revenue from existing and future generic products to support research and development efforts.

If any of our products, when acquired or developed and approved, cannot be successfully or timely commercialized, our operating results could be adversely affected. We cannot guarantee that any investment we make in developing products will be recouped, even if we are successful in commercializing those products.

We expend a significant amount of resources on research and development, including milestones on in-licensed products, which may not lead to successful product introductions.

Much of our development effort is focused on technically difficult-to-formulate products or products that require advanced manufacturing technology. We expend resources on research and development primarily to enable us to manufacture and market FDA-approved products in accordance with FDA regulations. Typically, research expenses related to the development of innovative compounds and the filing of NDAs are significantly greater than those expenses associated with ANDAs. We spent $19.7 million and $32.3 million on research and development expenses in the years ended December 31, 2020 and 2019, respectively. We have entered into, and may in the future enter into, agreements that require us to make significant milestone payments upon achievement of various research and development events and regulatory approvals. As we continue to develop and in-license new products, we will likely incur increased research, development and licensing expenses. Because of the inherent risk associated with research and development efforts in our industry, particularly with respect to new drugs, our research and development expenditures may not result in the successful introduction of new FDA-approved products. Also, after we or our development partners submit an ANDA or NDA, the FDA may request that we conduct additional bioequivalence studies for an ANDA or additional clinical trials for an NDA. For example, in December 2020 we received a CRL from the FDA in connection with our NDA for arbaclofen ER. In the CRL FDA indicated we would need to conduct a new study in order to provide substantial evidence of efficacy of arbaclofen given that the primary endpoint for Study OS440-3004, change from baseline to Day 84 in TNmAS-MAL scores comparing arbaclofen 40 mg to placebo, was not met and the co-primary endpoint, results from the clinical global impression of change on Day 84, did not support a treatment benefit.. Any additional clinical studies required for arbaclofen ER as a result of our discussions with the FDA regarding the CRL may result in substantial additional research and development costs.

We may be unable to reasonably determine the total research and development costs required to develop a particular product. As a result, we cannot be certain that any investment made in developing products will be recovered, even if we are successful in commercializing the product. To the extent that we expend significant resources on research and development efforts and are not ultimately able to introduce successful new products as a result of those efforts or

cost-effectively commercialize new products, our business, financial position and results of operations may be materially adversely affected.

If the FDA does not conclude that certain of our product candidates satisfy the requirements for the Section 505(b)(2) regulatory approval pathway, or if the requirements for such product candidates under Section 505(b)(2) are not as we expect, the approval pathway for those product candidates will likely take significantly longer, cost significantly more and entail significantly greater complications and risks than anticipated, and in either case may not be successful.

We are developing proprietary product candidates for which we intend to seek FDA approval through the Section 505(b)(2) regulatory pathway. The Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Act, added Section 505(b)(2) to the Federal Food, Drug and Cosmetic Act, or FDCA. Section 505(b)(2) permits the filing of an NDA where at least some of the information required for approval comes from studies that were not conducted by or for the applicant and for which the applicant has not obtained a right of reference. Section 505(b)(2), if applicable to us under the FDCA, would allow an NDA we submit to FDA to rely in part on data in the public domain or the FDA's prior conclusions regarding the safety and effectiveness of approved compounds, which could expedite the development program for our product candidates by potentially decreasing the amount of clinical data that we would need to generate in order to obtain FDA approval. If the FDA does not allow us to pursue the Section 505(b)(2) regulatory pathway as anticipated, we may need to conduct additional clinical trials, provide additional data and information, and meet additional standards for regulatory approval. If this were to occur, the time and financial resources required to obtain FDA approval for these product candidates, and complications and risks associated with these product candidates, would likely substantially increase. We could need to obtain additional funding, which could result in significant dilution to the ownership interests of our then existing shareholders to the extent we issue equity securities or convertible debt. We cannot assure you that we would be able to obtain such additional financing on terms acceptable to us, if at all. Moreover, inability to pursue the Section 505(b)(2) regulatory pathway would likely result in new competitive products reaching the market more quickly than our product candidates, which would likely materially adversely impact our competitive position and prospects. Even if we are allowed to pursue the Section 505(b)(2) regulatory pathway, we cannot assure you that our product candidates will receive the requisite approvals for commercialization.

In addition, notwithstanding the approval of a number of products by the FDA under Section 505(b)(2) over the last few years, certain brand-name pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA's interpretation of Section 505(b)(2) is successfully challenged, the FDA may change its 505(b)(2) policies and practices, which could delay or even prevent the FDA from approving any NDA that we submit under Section 505(b)(2). In addition, the pharmaceutical industry is highly competitive, and Section 505(b)(2) NDAs are subject to special requirements designed to protect the patent rights of sponsors of previously approved drugs that are referenced in a Section 505(b)(2) NDA. These requirements may give rise to patent litigation and mandatory delays in approval of our NDAs for up to 30 months or longer depending on the outcome of any litigation. It is not uncommon for a manufacturer of an approved product to file a citizen petition with the FDA seeking to delay approval of, or impose additional approval requirements for, pending competing products. If successful, such petitions can significantly delay, or even prevent, the approval of the new product. However, even if the FDA ultimately denies such a petition, the FDA may substantially delay approval while it considers and responds to the petition. In addition, even if we are able to utilize the Section 505(b)(2) regulatory pathway, there is no guarantee this would ultimately lead to accelerated product development or earlier approval.

Moreover, even if our product candidates are approved under Section 505(b)(2), the approval may be subject to limitations on the indicated uses for which the products may be marketed or to other conditions of approval, or may contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the products.

The testing required for the regulatory approval of our products is conducted primarily by independent third parties. Any failure by any of these third parties to perform this testing properly and in a timely manner may have an adverse effect upon our ability to obtain regulatory approvals.

Our applications for the regulatory approval of our products, including both internally developed and in-licensed products, incorporate the results of testing and other information that is conducted or gathered primarily by independent third parties (including, for example, manufacturers of raw materials, testing laboratories, CROs or independent research facilities). Our ability to obtain and maintain regulatory approval of the products being tested is dependent, in part, upon the quality of the work performed by these third parties, the quality of the third parties' facilities and the accuracy of the information provided by third parties. Our control over any of these factors may be limited. We rely on these parties for execution of our preclinical studies and clinical trials, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our trials is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards and our reliance on the CROs does not relieve us of all of our regulatory responsibilities. We and our CROs are required to comply with FDA laws and regulations regarding GCP, which are also required by the Competent Authorities of the Member States of the European Economic Area and comparable foreign regulatory authorities in the form of International Conference on Harmonization, or ICH, guidelines for all of our products in clinical development. Regulatory authorities enforce GCP through periodic inspections of trial sponsors, principal investigators and trial sites.

We have in the past been subject to audits by the FDA that have identified irregularities and deviations from GCP. If we or any of our CROs fail to comply with applicable GCP, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications, if at all.

We also rely on contract laboratories and other third parties, such as CROs, to conduct or otherwise support our preclinical studies properly and on time, which are subject to GLP requirements. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials or preclinical studies comply with applicable GCP and GLP regulations. In addition, our clinical trials must be conducted with products produced under the FDA's cGMP regulations. While we have agreements governing activities of our CROs, we have limited influence over their actual performance. In addition, portions of the clinical trials for our product candidates may be conducted outside of the United States, which will make it more difficult for us to monitor CROs and perform visits of our clinical trial sites and will force us to rely heavily on CROs to ensure the proper and timely conduct of our clinical trials and compliance with applicable regulations, including GCP and GLP requirements.

If testing of our product candidates is not performed properly, or if the FDA or any equivalent foreign regulatory authority finds that the clinical trials are deficient, we may be required to repeat the clinical trials or to conduct additional clinical trials, which would result in additional expenses and may adversely affect our ability to obtain or maintain regulatory approvals. As a result, our ability to launch or continue selling products could be denied, restricted or delayed.

Although we have received orphan drug designation for arbaclofen, we may not obtain or maintain the benefits associated with orphan drug designation, including market exclusivity for arbaclofen.

Regulatory authorities in some jurisdictions, including the United States, may designate drugs intended for relatively small patient populations as orphan drugs. Under the Orphan Drug Act, the FDA may designate a drug as an orphan drug if it is a drug intended to treat a rare disease or condition, which is generally defined as a patient population of fewer than 200,000 individuals in the United States, or a patient population greater than 200,000 in the United States where there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the United States. In the United States, Orphan Drug Designation entitles a party to financial incentives such as opportunities for grant funding toward clinical trial costs, tax advantages and user-fee waivers. In addition, if a product that has Orphan Drug Designation subsequently receives the first FDA approval for the disease for which it has such designation, the product is entitled to orphan drug exclusivity, which means that the FDA may not approve any other applications, including a full NDA to market the same product for the same indication for seven years, except in limited circumstances, such as a

showing of clinical superiority to the product with orphan drug exclusivity or where the manufacturer is unable to assure sufficient product quantity.

Although we have received orphan drug designation for arbaclofen for the alleviation of signs and symptoms of spasticity resulting from multiple sclerosis, we may not receive the full set of benefits potentially associated with orphan drug designation. The FDA has previously approved baclofen, a racemic mixture comprised of an R- and an S-isomer, for the treatment of intractable muscle spasticity in multiple sclerosis patients. If the FDA determines that our product, arbaclofen, which is the R-isomer of baclofen, contains the same active ingredient and is indicated for the same use as the approved product, we could be precluded from obtaining orphan drug exclusivity for our product unless we are able to demonstrate that our product is clinically superior to the approved product, which could potentially require a head-to-head study. Moreover, even if we obtain orphan drug exclusivity, that exclusivity may not effectively protect the product from competition because different drugs with different active moieties can be approved for the same condition. Even after an orphan product is approved, the FDA can subsequently approve the same drug with the same active moiety for the same condition if the FDA concludes that the later drug is safer, more effective or makes a major contribution to patient care. A competitor also may receive approval of different products for the same indication for which the orphan product has exclusivity or obtain approval for the same product but for a different indication for which the orphan product has exclusivity. Additionally, orphan drug exclusivity may be lost if the FDA determines that the request for designation was materially defective or if the manufacturer is unable to assure sufficient quantity of the drug to meet the needs of patients with the rare disease or condition. Orphan Drug Designation neither shortens the development time or regulatory review time of a drug nor gives the drug any advantage in the regulatory review or approval process.

Our products or product candidates may cause undesirable side effect or have other adverse properties that could delay or prevent their regulatory approval or limit the scope of any approved package insert or market acceptance, or result in significant negative consequences following marketing approval.

Treatment with our products or product candidates may produce undesirable side effects or adverse reactions or events. Although many of our products or product candidates contain active ingredients that have already been approved, meaning that the side effects arising from the use of the active ingredient or class of drug in our products or product candidates is generally known, our products or product candidates may still cause undesirable or unknown side effects. These could be attributed to the active ingredient or class of drug or to our unique formulation of such products or product candidates, or other potentially harmful characteristics. Such characteristics could cause us, our IRBs, clinical trial sites, the FDA or other regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay, denial or withdrawal of regulatory approval, which may harm our business, financial condition and prospects significantly.

If any of our products cause serious or unexpected side effects after receiving market approval, a number of potentially significant negative consequences could result. If side effects are identified with our marketed products, or if manufacturing problems occur, changes in labeling of our products may be required, which could have a material adverse effect on our sales. Label changes may be necessary for a number of reasons, including the identification of actual or potential safety or efficacy concerns by regulatory agencies or the discovery of significant problems with a similar product that implicates an entire class of products. Any significant concerns raised about the safety or efficacy of the products could also result in the need to reformulate those products, to conduct additional clinical trials, to make changes to the manufacturing processes, or to seek re-approval of the relevant manufacturing facilities. Significant concerns about the safety and effectiveness of a product could ultimately lead to the revocation of its marketing approval. Our products, including ConZip, Divigel and VERT, have in the past been subject to safety labeling changes, which we have addressed and incorporated into relevant product labeling. Our products and product candidates may become subject to additional safety labeling changes in the future. New safety issues may require us to, among other things, provide additional warnings or restrictions on product package inserts, even including boxed warnings in the United States or similar warnings outside of the United States, directly alert healthcare providers of new safety information, narrow our approved indications, conduct additional clinical studies, alter or terminate current or planned trials for additional uses of products, impose restrictions on distribution, require implementation of REMS, or even remove a product from the market, any of which could have a significant adverse impact on potential sales of the products or require us to expend significant additional funds. The revision of product labeling or the regulatory actions described above could have a material adverse effect on our sales of the affected products and on our business and

results of operations. Additionally, we could be sued and held liable for harm caused to patients, and our reputation may suffer.

If any of our products or products we develop or commercialize in the future are shown to be harmful or generate negative publicity from perceived lack of effect or harmful effects, our business, financial condition, results of operations and prospects could be harmed significantly.

If our products or product candidates do not produce the intended effects, our business may suffer.

If our products or product candidates do not produce the effects intended our business may suffer. For example, in July 2020, we received regulatory approval from the FDA for Upneeq, the first approved non-surgical treatment for acquired blepharoptosis, or droopy eyelid, in adults. We launched Upneeq in September 2020 with an in-person sales effort focused on ophthalmologists and optometrists. Despite these efforts, Upneeq may not produce sufficient treatment such that patients or eye care specialists deem it an effective treatment for acquired blepharoptosis. Our products and product candidates, including Upneeq, may not have the effect intended if they are not taken in accordance with applicable instructions. For example, if a patient switches from using another company's product to one of our products, there may be an actual or perceived lack of efficacy or increase in side effects. This is not uncommon and has been observed, for example, in patients switching between products containing methylphenidate. In this instance, the FDA has the ability to change the designation from AB to BX, or alternatively, to discontinue the product's approval. Furthermore, there can be no assurance that any of the products, even when used as directed, will have the effects intended.

Failures of or delays in clinical trials are common and have many causes, and such failures or delays could result in increased costs to us and could prevent or delay our ability to obtain regulatory approval and commence product sales for new products.

We may experience failures of or delays in clinical trials of our product candidates. Our clinical trials may fail or be delayed for a variety of reasons, including, among others: delays in obtaining regulatory approval to commence a trial; imposition of a clinical hold for safety reasons or following an inspection of our clinical trial operations or trial sites by the FDA or other regulatory authorities; delays in reaching agreement on acceptable terms with prospective contract research organizations, or CROs, and clinical trial sites, or failure by such CROs to carry out the clinical trial at each site in accordance with the terms of our agreements with them; delays in obtaining required IRB approval at each site; difficulties or delays enrolling a sufficient number of patients or in having patients complete participation in a trial or return for post-treatment follow-up, or clinical sites electing to terminate their participation in one of our clinical trials, which would likely have a detrimental effect on subject enrollment; time required to add new clinical sites; or delays or failure by us or our contract manufacturers to produce and deliver sufficient supply of clinical trial materials.

In addition, identifying and qualifying patients to participate in clinical trials of our product candidates is critical to our success. The timing of our clinical trials depends on the speed at which we can recruit patients to participate in testing our product candidates as well as completion of required follow-up periods. We may not be able to identify, recruit and enroll a sufficient number of patients, or those with required or desired characteristics or to complete our clinical trials, in a timely manner. Patient enrollment and completion of the trials is affected by factors including: the severity of the disease under investigation; the design of the trial protocol; the size of the patient population; the eligibility criteria for the trial in question; the perceived risks and benefits of the product candidate under trial; the proximity and availability of clinical trial sites for prospective patients; the availability of competing therapies and clinical trials; efforts to facilitate timely enrollment in clinical trials; patient referral practices of physicians; and the ability to monitor patients adequately during and after treatment.

If we are unable to initiate or complete our planned clinical trials or any such clinical trial is delayed for any of the above reasons or other reasons, our development costs may increase, our regulatory approval process could fail or be delayed and our ability to commercialize and commence sales of our product candidates could be materially harmed, which could have a material adverse effect on our business.

Moreover, clinical data are often susceptible to varying interpretations, and many companies that have believed their drug candidates performed satisfactorily in clinical trials have nonetheless failed to obtain marketing approval of their

drug candidate. Furthermore, results from our clinical trials may not meet the level of statistical significance or otherwise provide the level of evidence or safety and efficacy required by the FDA or other regulatory authorities for approval of a drug candidate. Finally, clinical trials are expensive and require significant operational resources to implement and maintain.

Many companies in the pharmaceutical and biotechnology industries, including our company, have suffered significant setbacks in later-stage clinical trials even after achieving promising results in earlier-stage clinical trials. For example, the results from completed preclinical studies and clinical trials may not be replicated in later clinical trials, and ongoing clinical trials for our drug candidates may not be predictive of the results we may obtain in later-stage clinical trials or of the likelihood of approval of a drug candidate for commercial sale. In addition, from time to time, we report interim data from our clinical trials. Interim data from a clinical trial may not be predictive of final results from the clinical trial. Failure to advance drug candidates through clinical development could impair our ability to ultimately commercialize products, which could materially harm our business and long-term prospects.

The use of legal, regulatory and legislative strategies by brand competitors, including authorized generics and citizen's petitions, as well as the potential impact of proposed legislation, may increase our costs associated with the introduction or marketing of our generic products, delay or prevent such introduction or significantly reduce the profit potential of our products.

Brand drug companies often pursue strategies that may serve to prevent or delay competition from generic alternatives to their branded products. These strategies include, but are not limited to:

- marketing an authorized generic version of a branded product at the same time that we introduce a generic equivalent of that product, directly or through agreement with a generic competitor;
- filing citizen petitions with the FDA that may limit generic competition and result in delays of our product approvals;
- using REMS-related distribution restrictions or other means of limiting access to their branded products to prevent us from obtaining product samples needed to conduct bioequivalence testing required for ANDA approval, thereby delaying or preventing us from obtaining FDA approval of a generic version of such branded products;
- seeking to secure patent protection of certain "Elements to Assure Safe Use" of a REMS program, which are required medical interventions or other actions healthcare professionals need to execute prior to prescribing or dispensing the drug to the patient, in an attempt to prevent the generic company's ability to avoid infringement of the patents in question or secure approval;
- seeking to establish regulatory and legal obstacles that would make it more difficult to demonstrate a generic product's bioequivalence or "sameness" to the related branded product;
- initiating legislative and administrative efforts in various states to limit the substitution of generic versions of branded products for the corresponding branded products;
- filing suits for patent infringement that automatically delay FDA approval of generic products;
- introducing "next-generation" products prior to the expiration of market exclusivity for their branded product, which often materially reduces the demand for the generic product for which we may be seeking FDA approval;
- obtaining extensions of market exclusivity by conducting clinical trials of branded drugs in pediatric populations or by other methods;

- persuading the FDA to withdraw the approval of branded drugs for which the patents are about to expire, thus allowing the brand company to develop and launch new patented products serving as substitutes for the withdrawn products;

- seeking to obtain new patents on drugs for which patent protection is about to expire;

- filing patent applications that are more complex and costly to challenge;

- seeking temporary restraining orders and injunctions against selling a generic equivalent of their branded product based on alleged misappropriation of trade secrets or breach of confidentiality obligations;

- seeking temporary restraining orders and injunctions against a generic company that has received final FDA approval for a product and is attempting to launch an at risk product prior to resolution of related patent litigation;

- reducing the marketing of the branded product to healthcare providers, thereby reducing the branded drug's commercial exposure and market size, which in turn adversely affects the market potential of the equivalent generic product; and

- converting branded prescription drugs that are facing potential generic competition to over-the-counter products, thereby potentially blocking the sale of generic prescription drugs under the operation of the Durham-Humphrey amendments to the U.S. Federal Food, Drug, and Cosmetic Act, or FDCA, or significantly impeding the growth of the generic prescription market for the drugs.

The FDCA provides for an additional six months of marketing exclusivity attached to another period of exclusivity, such as a five-year period of exclusivity granted to the first applicant to obtain approval of an NDA for a new chemical entity or if a sponsor conducts pediatric clinical trials in response to a written request from the FDA. Some companies have lobbied Congress for amendments to the Hatch-Waxman legislation that would give them additional advantages over generic competitors. For example, although the term of a company's drug patent can be extended to reflect a portion of the time an NDA is under regulatory review, some companies have proposed extending the patent term by a full year for each year spent in clinical trials, rather than the one-half year that is currently permitted. If proposals like these were to become effective, our entry into the market and our ability to generate revenues associated with new generic products may be delayed, reduced or eliminated, which could have a material adverse effect on our business, prospects and financial position.

Risks related to our intellectual property rights

We depend on our ability to protect our intellectual property and proprietary rights. We may not be able to keep our intellectual property and proprietary rights confidential and protect such rights.

Our success depends on our ability to protect and defend the intellectual property rights associated with our current and future products. If we fail to protect our intellectual property adequately, competitors may manufacture and market products similar to, or that may be confused with, our products, and our generic competitors may obtain regulatory approval to make and distribute generic versions of our branded products. We cannot be certain that patents will be issued with respect to any of our patent applications or that any existing or future patents issued to or licensed by us will provide competitive advantages for our products or will not be challenged, invalidated, circumvented or held unenforceable in proceedings commenced by our competitors or other third parties. Furthermore, our patent rights may not prevent or limit our present and future competitors from developing, making, importing, using or commercializing products that are functionally similar to our products. Some of our products, including some of our promoted products, are not protected by patents at all.

The patent position of companies in the pharmaceutical industry generally involves complex legal and factual questions, and has been and remains the subject of significant litigation in recent years. Legal standards relating to scope and

validity of patent claims are evolving and may differ in various countries. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Any patents we have obtained, or may obtain in the future, may be challenged, invalidated or circumvented. For example, Upneeq is protected by three years of new product data exclusivity that expires July 8, 2023, and six patents listed in the FDA Orange Book, three of which expire August 26, 2031 and three of which expire December 16, 2039. A competitor that develops a generic version of Upneeq can submit an ANDA at any time, and that ANDA may include a Paragraph IV certification alleging that our Orange Book-listed patents are invalid, unenforceable or not infringed. If that were to occur, we would need to assert one or more of our patents. Litigation in which generic companies challenge Orange Book listed patents tends to be lengthy and expensive, and may result in one or more of our patents being held invalid, unenforceable or not infringed and, may expose us to generic competition sooner than we otherwise expect. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. We may be involved in lawsuits to protect or enforce our patents or the patents of our licensors, which could be expensive, time consuming and unsuccessful.

In addition to the above limitations, our patent protection outside the United States may be further limited. Filing, prosecuting and defending patents on product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States could be less extensive than those in the United States. We generally select to pursue patent protection in only a limited number of jurisdictions outside of the United States. Even where we wish to pursue protection, we may not be able to obtain patent protection for certain technology outside the United States. In addition, the laws of some countries do not protect intellectual property rights to the same extent as federal and state laws in the United States, even in jurisdictions where we do pursue patent protection. The laws of certain non-U.S. countries do not protect proprietary rights to the same extent or in the same manner as the U.S., and therefore we may encounter additional problems in protecting and defending our intellectual property in certain non-U.S. jurisdictions. Many companies have encountered significant problems in protecting and defending intellectual property rights in non-U.S. jurisdictions.

Proceedings to enforce patent rights, whether in the United States or in non-U.S. jurisdictions, could: result in substantial costs and divert our efforts and attention from other aspects of our business; put our patents at risk of being invalidated or interpreted narrowly; put our patent applications at risk of not issuing; and provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded to us, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage.

We also rely particularly on trade secrets, unpatented know-how and proprietary expertise and continuing innovation to develop and maintain our competitive position. We generally enter into confidentiality agreements with licensees, suppliers, employees, consultants and other parties. This is done in part because not all of our products are protected by patents. We cannot provide assurance that these agreements will not be breached. We also cannot be certain that we will have recourse to adequate remedies in the event of a breach. Disputes may arise concerning the ownership of intellectual property or the applicability of confidentiality agreements. We cannot be sure that our trade secrets and proprietary technology will not be independently developed or otherwise become known by our competitors or, if patents are not issued with respect to internally developed products, that we will be able to maintain the confidentiality of information relating to these products. Efforts to enforce our intellectual property rights can be costly, time-consuming and ultimately unsuccessful. Any failure to adequately prevent disclosure of our know-how, trade secrets and other propriety information could have a material adverse impact on our business and our prospects.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance and annuity fees on any issued patent are due to be paid to the U.S. Patent and Trademark office, or the USPTO, and foreign patent agencies in several stages over the lifetime of the patent. The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. While an inadvertent lapse may, in many cases, be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which

noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly prepare and submit formal documents. If we or our licensors fail to maintain the patents and patent applications covering our products or product candidates, our competitors might be able to enter the market, which would harm our business, prospects and financial position.

Our competitors or other third parties may allege that we, our suppliers or partners are infringing their intellectual property, forcing us to expend substantial resources in litigation, the outcome of which is uncertain. Any unfavorable outcome of such litigation, including losses related to "at-risk" product launches, could have a material adverse effect on our business, financial position and results of operations.

Companies that produce branded products routinely bring litigation against entities selling or seeking regulatory approval to manufacture and market generic or other copies of their branded products, or products related to their branded products or technologies. These companies or other patent holders, including patent holders who do not have related products, may allege patent infringement or other violations of intellectual property rights. Patent holders may also bring patent infringement suits against companies that are currently marketing and selling an approved product, including an approved generic product. Litigation often involves significant expense and can delay or prevent introduction or sale of our generic or other products. For example, a certain period of delay may be statutorily prescribed, or a court could grant a patent holder injunctive relief for the period of the litigation. If third party patents are held valid, enforceable and infringed by our products, we may, unless we could obtain a license from the patent holder, need to delay selling our corresponding product, pay damages, and, if we are already selling our product, cease selling and potentially destroy existing product stock. These risks apply to our branded products as well as our generic products. Third parties, including our competitors, may allege that one of our branded products violates their patent rights, which would expose us to the same risks. A license may not be available from the patent holder on commercially reasonable terms, or at all. If available, we may choose to take a license under a third party's patent rights to resolve a dispute, even in the absence of a finding by a court that a patent is valid, enforceable and infringed.

There may be situations in which we may make business and legal judgments to manufacture, market or sell products that are subject to claims of alleged patent infringement prior to final resolution of those claims by the courts, based upon our belief that such patents are invalid, unenforceable, or are not infringed by our manufacturing, marketing and sale of such products. This is referred to in the pharmaceutical industry as an "at-risk" launch. The risk involved in an at-risk launch can be substantial because, if a patent holder ultimately prevails against us, the remedies available to such holder may include, among other things, permanent injunctive relief preventing the sale of the product and damages measured as a reasonable royalty or by the profits lost by the patent holder, which can be significantly higher than the profits we make from selling our product. We could face substantial damages from adverse court decisions in such matters. We could also be at risk for the value of such inventory that we are unable to market or sell.

Litigation concerning intellectual property rights in the pharmaceutical industry is commonplace and can be protracted and expensive. Pharmaceutical companies with patented branded products regularly sue companies that file applications to produce generic equivalents of their patented branded products for alleged patent infringement or other violations of intellectual property rights, which are expensive to defend and may delay or prevent the entry of such generic products into the market. Generally, a generic drug may not be marketed until the applicable patent(s) on the brand name drug expire or are held to be invalid, unenforceable or not infringed by the generic product at issue. When we or our development partners submit an ANDA to the FDA for approval of a generic drug, we or our development partners must certify either (i) that there is no patent listed with the FDA as covering the relevant branded product, (ii) that any patent listed as covering the branded product has expired, (iii) that the patent listed as covering the branded product will expire prior to the marketing of the generic product, in which case the ANDA will not be finally approved by the FDA until the expiration of such patent or (iv) that any patent listed as covering the branded drug is invalid or will not be infringed by the manufacture, sale or use of the generic product for which the ANDA is submitted, which we refer to as a "Paragraph IV" certification. Whenever we file an ANDA with a Paragraph IV certification, there is a high likelihood that a brand pharmaceutical company will sue us for alleged patent infringement or other violations of intellectual property rights. Also, competing pharmaceutical companies may file lawsuits against us alleging patent infringement or other violations of intellectual property rights or may file declaratory judgment actions against us alleging non-infringement, invalidity,

or unenforceability of our own patents. Because substantially all of our current business involves the development and marketing of products that are subject to potential claims of patent infringement by third parties or, with respect to our own branded products, are subject to third-party challenges, the threat of litigation, the outcome of which is inherently uncertain, is always present. Such litigation is often costly and time consuming and could result in a substantial delay in, or prevent, the introduction or marketing of our products, which could have a material adverse effect on our business, financial condition, prospects and results of operations. For more information on our material pending litigation, see "Legal Proceedings."

If we fail to comply with our obligations in the agreements under which we license rights from third parties, or if the license agreements are terminated for other reasons, we could lose license rights that are important to our business.

We are a party to a number of licenses that are important to our business and expect to enter into additional licenses in the future. Our existing license agreements impose, and we expect that future license agreements will impose, on us various development, regulatory and commercial diligence obligations, payment of milestones or royalties and other obligations. Additionally, existing or future license agreements may include a sublicense from a third party that is not the original licensor of the intellectual property at issue. Under such an agreement, we must rely on our licensor to comply with their obligations under the primary license agreements under which such third party obtained rights in the applicable intellectual property, where we may have no relationship with the original licensor of such rights. If our licensors fail to comply with their obligations under these upstream license agreements, the original third-party licensor may have the right to terminate the original license, which may terminate our sublicense. If this were to occur, we would no longer have rights to the applicable intellectual property unless we are able to secure our own direct license with the owner of the relevant rights, which we may not be able to do at a reasonable cost, on reasonable terms or at all, and this may impact our ability to continue to develop or commercialize our products incorporating the relevant intellectual property. If we fail to comply with our obligations under our license agreements, or we are subject to a bankruptcy or insolvency, the licensor may have the right to terminate the license. In the event that any of our existing or future important licenses were to be terminated by the licensor, we would likely need to cease further development and commercialization of the related program or be required to spend significant time and resources to modify the program to not use the rights under the terminated license. In the case of marketed products that depend upon a license agreement, we could be required to cease our commercialization activities, including sale of the affected product.

Disputes may arise between us and any of our licensors regarding intellectual property subject to such agreements, including:

- the scope of rights granted under the agreement and other interpretation-related issues;
- whether and the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the agreement;
- our right to sublicense patent and other rights to third parties;
- our diligence obligations with respect to the use of the licensed intellectual property, and what activities satisfy those diligence obligations;
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us, should any such joint creation occur;
- our right to transfer or assign the license; and
- the effects of termination.

These or other disputes over intellectual property that we have licensed or acquired may prevent or impair our ability to maintain our current arrangements on acceptable terms, or may impair the value of the arrangement to us. Any such

dispute, or termination of a necessary license, could have a material adverse effect on our business, financial condition and results of operations.

We may be subject to claims by third parties asserting that we or our employees have misappropriated their intellectual property, or claiming ownership of what we regard as our own intellectual property.

We may be subject to claims that our employees or we have inadvertently or otherwise used intellectual property, including trade secrets or other proprietary information, of any such employee's former employer. We may also in the future be subject to claims that we have caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these potential claims.

In addition, while it is our policy to require our employees and contractors who may be involved in the development of intellectual property to execute agreements assigning such intellectual property to us, such employees and contractors may breach the agreement and claim the developed intellectual property as their own.

If we fail in prosecuting or defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. A court could prohibit us from using technologies or features that are essential to our products if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers. Even if we are successful in prosecuting or defending against such claims, litigation could result in substantial costs and could be a distraction to our management team. In addition, any litigation or threat thereof may adversely affect our ability to hire employees or contract with independent service providers. Moreover, a loss of key personnel or their work product could hamper or prevent our ability to commercialize our products.

We may be subject to claims challenging the inventorship or ownership of our owned or in-licensed patent rights and other intellectual property.

We generally enter into confidentiality and intellectual property assignment agreements with our employees and consultants. However, these agreements may be breached and may not effectively assign intellectual property rights to us. Litigation may be necessary to defend against these and other claims challenging inventorship or ownership of inventions. The owners of intellectual property in-licensed to us could also face such claims. If we or our licensors fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Such an outcome could have a material adverse effect on our business. Even if we or our licensors are successful in defending against such claims, litigation could result in substantial costs and be a distraction to our management team and other employees.

Any trademarks we may obtain may be infringed or successfully challenged, resulting in harm to our business.

We rely on trademarks as one means to distinguish our products and product candidates from the products of our competitors. Our trademark applications may not result in registered trademarks. Third parties may oppose our trademark applications or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in substantial cost, loss of brand recognition and could require us to devote resources to advertising and marketing new brands. Our competitors may infringe our trademarks, and we may not have adequate resources to enforce our trademarks. Even if we are successful in defending the use of our trademarks or preventing third parties from infringing our trademarks, resolution of such disputes may result in substantial costs.

Risks related to our industry

Our profitability depends on coverage and reimbursement by governmental authorities, private health plans, MCOs and other third-party payors; healthcare reform and other future legislation creates uncertainty and may lead to reductions in coverage or reimbursement levels.

We have obtained coverage and reimbursement at varying levels for our products from governmental payors, private health insurers and other third-party payors such as MCOs. There is no assurance; however, that any drug that we market will be covered by any third-party payor, or that, once a coverage determination has been made, the third-party payor will offer an adequate reimbursement level for our product. Third-party payors may limit coverage to specific products on an approved formulary, which might not include all of the approved products for a particular indication. In determining whether to approve reimbursement for our products and at what level, we expect that third-party payors will consider factors that include the efficacy, cost effectiveness and safety of our products, as well as the availability of other treatments including other generic prescription drugs and over-the-counter alternatives. Further, in order to obtain and maintain acceptable reimbursement levels and access for patients at copay levels that are reasonable and customary, we may face mounting pressure to offer discounts or rebates from list prices to increase existing discounts and rebates, to offer discounts and rebates to a greater number of third-party payors or to implement other unfavorable pricing modifications. Obtaining and maintaining favorable reimbursement can be a time consuming and expensive process, and there is no guarantee that we will be able to negotiate or continue to negotiate pricing terms with third-party payors at levels that are profitable to us, or at all. Additionally, any reimbursement granted may not be maintained and any limits on reimbursement available from third-party payors may reduce the demand for, or negatively affect the price of those products, and could significantly harm our business, results of operations, financial condition and cash flows.

In particular, there is no assurance that drug plans participating under the Medicare Part D program will cover our products or that any covered drugs will be reimbursed at amounts that reflect current or historical levels. Medicare Part D is a voluntary program that offers prescription drug coverage through private plans to Medicare beneficiaries (primarily the elderly over 65 and the disabled) enrolled with the plan. Medicare Part D coverage may vary from plan to plan and the plans may implement formularies and certain utilization management activities (such as tired co-pay structures and prior authorization requirements) as well as negotiate rebates with pharmaceutical manufacturers to manage access and costs. Manufacturers must also provide discounts on Medicare Part D brand name prescription drugs sold to Medicare beneficiaries in the Medicare Part D coverage gap (i.e., the so called “donut hole”), which discount increased from 50% to 70% in 2019.

There is no assurance that Medicaid programs will continue to offer coverage, and adequate reimbursement levels, for our pharmaceutical products. Most state Medicaid programs have established preferred drug lists, and the process, criteria and timeframe for obtaining placement on the preferred drug list varies from state to state. For drugs not on the preferred drug list, the prescriber may have to request and obtain prior authorization in order for the drug to be covered. Under the Medicaid drug rebate program, a manufacturer must pay a rebate for Medicaid utilization of a product. The rebate for single source products (including authorized generics) is based on the greater of (i) a specified percentage of the product’s average manufacturer price or (ii) the difference between the product’s average manufacturer price and the best price offered by the manufacturer. The rebate for multiple source products is a specified percentage of the product’s average manufacturer price. In addition, many states have established supplemental rebate programs as a condition for including a drug product on a preferred drug list. The profitability of our products may depend on the extent to which they appear on the preferred drug lists of a significant number of state Medicaid programs and the amount of the rebates that must be paid to such states. In addition, there is significant fiscal pressure on the Medicaid program, and legislative and regulatory action to lower the pharmaceutical costs of the program is possible. For example, legislation enacted in 2019 revises how certain prices are calculated under the Medicaid Drug Rebate Program, a revision that the Congressional Budget Office estimated will save the federal government approximately $3 billion in the next ten years. Any such legislative action could materially adversely affect our anticipated total revenues and results of operations.

In addition, third-party payors are increasingly challenging pricing of pharmaceutical products, and imposing controls to manage costs. For example, we were subject to an audit by the Office of Inspector General related to purported overcharges with respect to the prices of VERT that were purchased by the U.S. Department of Veterans Affairs. Although we believe that the prices we charged in these transactions were appropriate and have settled this matter,

adverse determination of other audits could result in the imposition of significant financial penalties, which could have a material adverse impact on our results of operations and financial condition.

The trend toward managed healthcare in the United States and legislative proposals to reform healthcare and government insurance programs could significantly influence the purchase of pharmaceutical products, resulting in lower prices and a reduction in product demand. The ACA was signed into law in March 2010. A number of provisions of the ACA continue to have a negative impact on the price of our products sold to U.S. government entities. As examples, the legislation includes measures that (i) significantly increase Medicaid rebates through both the expansion of the program and significant increases in rebates; (ii) substantially expand the Public Health System (340B) program to allow other entities to purchase prescription drugs at substantial discounts; (iii) extend the Medicaid rebate to utilization under Managed Medicaid; (iv) require manufacturers to provide point of sale discounts on Medicare Part D beneficiary spending in the coverage gap for branded and authorized generic prescription drugs (which discount was recently increased effective in 2019); and (v) levy a significant excise tax on the industry to fund the healthcare reform. Such cost containment measures and healthcare reform may affect our ability to sell our products and could have a material adverse effect on our business, results of operations and financial condition.

Executive, legislative and judicial action subsequent to the enactment of the ACA has sought to repeal, modify or delay implementation of the ACA. Tax reform legislation enacted in 2017 removed the tax penalty applicable to the "individual mandate," which requires Americans to carry a minimal level of health insurance. Starting in 2019, the tax penalty for not carrying such insurance is zero. Effective January 1, 2019, the point-of-sale discount that pharmaceutical manufacturers who participate in Medicare Part D must provide to Medicare Part D beneficiaries in the coverage gap was increased from 50% to 70%. There have also been judicial challenges to the ACA. The case *Texas v. Azar*, which challenges the constitutionality of the ACA, including provisions that are unrelated to healthcare reform but were enacted as part of the ACA, was argued before the Supreme Court in November 2020. Pending resolution of the litigation, all of the ACA but the individual mandate to buy health insurance remains in effect.

Beyond the ACA, there have been ongoing health care reform efforts, including a number of recent actions. Some recent healthcare reform efforts have sought to address certain issues related to the COVID-19 pandemic, including an expansion of telehealth coverage under Medicare and accelerated or advanced Medicare payments to healthcare providers. Other reform efforts affect pricing or payment for drug products. For example, the Medicaid Drug Rebate Program has been subject to statutory and regulatory changes. A number of regulations were issued in late 2020 and early 2021. For example, revisions to the federal anti-kickback statute, now effective 2023, would remove protection for traditional Medicare Part D discounts offered by pharmaceutical manufacturers to PBMs and health plans. Some of these changes have been and may continue to be subject to legal challenge. For example, courts temporarily enjoined a new "most favored nation" payment model for select drugs covered under Medicare Part B that was to take effect on January 1, 2021 and would limit payment based on international drug price.

The nature and scope of health care reform in the wake of the transition from the Trump administration to the Biden administration remains uncertain. The Department of Justice under the Biden administration informed the Supreme Court that the government no longer takes the position that the individual mandate is unconstitutional and cannot be severed from the rest of the ACA. President Biden has temporarily halted implementation of new rules issued immediately prior to the transition that had not yet taken effect (which include a number of health care reforms) to allow for review by the new administration. The revisions to the federal anti-kickback statute initially scheduled to take effect in 2022 now take effect in 2023. More generally, President Biden supported reforms to lower drug prices during his campaign for the presidency.

Future healthcare legislation could also have a significant impact on our business. There is uncertainty with respect to the impact these changes, if any, may have, and any changes likely will take time to unfold. Any additional federal healthcare reform measures adopted in the future could limit the amounts that federal and state governments will pay for healthcare products and services, and, in turn, could significantly reduce the projected value of certain development projects and reduce our profitability. Due to the uncertainties regarding the outcome of future healthcare reform initiatives and their enactment and implementation, we cannot predict which, if any, of the future reform proposals will be adopted or the effect such adoption may have on us.

In addition, other broader legislative changes have been adopted that could have an adverse effect upon, and could prevent, our products' commercial success. The Budget Control Act of 2011, as amended, resulted in the imposition of 2% reductions in Medicare (but not Medicaid) payments to providers in 2013 and remains in effect through 2030 (except May 1, 2020 to March 31, 2021) unless additional Congressional action is taken. Any significant spending reductions affecting Medicare, Medicaid or other publicly funded or subsidized health programs that may be implemented and/or any significant taxes or fees that may be imposed on us could have an adverse impact on our results of operations.

There has been heightened public pressure and government scrutiny over pharmaceutical pricing practices, which may negatively impact our ability to generate revenues from our products, which could result in material adverse effects to our business, financial position and results of operations.

There has been heightened governmental scrutiny recently over pharmaceutical pricing practices in light of the rising cost of prescription drugs. Such scrutiny has resulted in several Congressional inquiries in recent years and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing; review the relationship between pricing and manufacturer patient assistance programs, reduce the costs of drugs under Medicare, and reform government program reimbursement methodologies for drug products. At the state level, legislatures have become increasingly active in passing, or seeking to pass, legislation and regulations designed to control pharmaceutical and biological product pricing, including laws establishing maximum drug reimbursement rates for governmental or other payors within a state, laws limiting consumer copayment obligations, transparency and disclosure measures related to drug price increases and laws seeking to encourage drug importation from other countries and bulk purchasing. Reductions in reimbursement levels may negatively impact the prices we receive or the frequency with which our products are prescribed or administered. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. Any downward pricing pressure on the price of certain of our products arising from social or political pressure to lower the cost of pharmaceutical products could have a material adverse impact on our business, results of operations and financial condition.

There has also been increasing U.S. federal and state enforcement interest with respect to drug pricing. For instance, the DOJ has brought actions against pharmaceutical companies, seeking information about the sales, marketing and pricing of certain generic drugs, some of which have been resolved through settlements. In addition to the effects of any investigations or claims brought against us, our business, results of operations and financial condition could also be adversely affected if any such inquiries, of us or of other pharmaceutical companies or the industry more generally, were to result in legislative or regulatory proposals that limit our ability to increase the prices of our products.

Certain prescription product coding databases may choose to reclassify prescription dietary supplements as non-prescription, or over-the-counter, which may result in limited or no insurance coverage for these products and a decrease in utilization of such products

Many private and government insurance plans refer to product listing databases to determine whether or not a product is a prescription product, a non-prescription, or over-the-counter product or a medical food product. How a product is listed in these databases impacts whether or not a product is covered by insurance, or whether it receives limited coverage, as many payors may choose not to cover over-the-counter products. For example, on May 15, 2017, First Databank, a prescription coding database, announced that starting in June 2017 it would classify all dietary supplements as non-prescription. Several companies have sued First Databank, in an effort to prevent or delay the implementation of the reclassification. Subsequently, First Databank proceeded with reclassifying prenatal and non-prenatal dietary supplements to non-prescription which affected some of our products. Payors, however, are not bound by the listing databases and may still decide to cover prenatal supplements. If other listing databases were to re-classify all dietary supplements, including prenatal dietary supplements, as non-prescription or over-the-counter, this could prevent insurance coverage for our prescription prenatal dietary supplements and negatively impact our future total revenues, profitability and cash flows.

We are subject to extensive governmental regulation and we face significant uncertainties and potentially significant costs associated with our efforts to comply with applicable regulations. Any non-compliance may result in fines or other sanctions, including debarment, product seizures, product recalls, injunctive actions and criminal prosecutions, which could result in material adverse effects to our business, financial position and results of operations.

The pharmaceutical industry operates in a highly regulated environment subject to the actions of courts and governmental agencies that influence the ability of a company to successfully operate its business and is subject to regulation by various governmental authorities at the federal, state and local levels with respect to the development, manufacture, labeling, sale, distribution, marketing, advertising and promotion of pharmaceutical products. As a pharmaceutical manufacturer and distributor, we are subject to extensive regulation by the federal government, principally the FDA and the Drug Enforcement Administration, or DEA, as well as by state governments.

The FDCA, the Controlled Substances Act, the Generic Drug Enforcement Act of 1992, or the Generic Drug Act, and other federal, state and local statutes and regulations govern the testing, manufacture, safety, labeling, storage, disposal, tracking, recordkeeping, approval, advertising and promotion (including to the healthcare community) of our products. If we, our products, the manufacturing facilities for our products, our CROs, or other persons or entities working on our behalf fail to comply with applicable regulatory requirements either before or after marketing approval, a regulatory agency, such as the FDA, may, depending on the stage of product development and approval, revoke, withdraw, or suspend approvals of previously approved products for cause, debar companies and individuals from participating in the drug-approval process, request or in certain circumstances mandate recalls of allegedly violative products, seize allegedly violative products, issue Warning Letters or Untitled Letters, mandate modifications to promotional materials or require the provision of corrective information to healthcare practitioners, amend and update labels or package inserts, suspend or terminate any ongoing clinical trials, refuse to approve pending applications or supplements to applications filed, refuse to allow entry into government contracts, obtain injunctions to close manufacturing plants allegedly not operating in conformity with FDA's cGMP requirements, stop shipments of allegedly violative products, impose fines perhaps significant in amount, require entry into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance and other sanctions imposed by courts or regulatory bodies, including criminal prosecutions. If we or a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions relative to that product or the manufacturing facility, including requiring product recall, notice to physicians, withdrawal of the product from the market or suspension of manufacturing. From time to time, we have voluntarily recalled our products and may do so in the future.

Because of the chemical ingredients of pharmaceutical products and the nature of the manufacturing process, the pharmaceutical industry is subject to extensive environmental laws and regulation and the risk of incurring liability for damages and the costs of remedying environmental problems. These requirements include regulation of the handling, manufacture, transportation, storage, use and disposal of materials, including the discharge of hazardous materials and pollutants into the environment. In the normal course of our business, we are exposed to risks relating to possible releases of hazardous substances into the environment, which could cause environmental or property damage or personal injuries, and which could result in (i) our noncompliance with such environmental and occupational health and safety laws and regulations and (ii) regulatory enforcement actions or claims for personal injury and property damage against us. If an unapproved or illegal environmental discharge or accident occurred or if we were to discover contamination caused by prior operations, including by prior owners and operators of properties we acquire, then we could be liable for cleanup, damages or fines, which could have a material adverse effect on our business, financial position, results of operations and cash flow. In the future, we may be required to increase expenditures in order to remedy environmental problems or comply with changes in applicable environmental laws and regulations. We could also become a party to environmental remediation investigations and activities. These obligations may relate to sites that we currently or in the future may own or lease, sites that we formerly owned or operated, or sites where waste from our operations was disposed. Additionally, if we fail to comply with environmental regulations to use, discharge or dispose of hazardous materials appropriately or otherwise to comply with the provisions of our operating licenses, the licenses could be revoked, and we could be subject to criminal sanctions or substantial civil liability or be required to suspend or modify our manufacturing operations. We currently operate in Florida, Georgia, and New Jersey, and in overseas jurisdictions including Argentina and Hungary, and we are required to comply with the laws and regulations of those states or

overseas jurisdictions in addition to any federal laws and regulations. We may in the future establish or acquire operations in other jurisdictions subject to equally or more stringent laws and regulations. Stricter environmental, safety and health laws and enforcement policies could result in substantial costs and liabilities to us, and could subject our handling, manufacture, use, reuse or disposal of substances or pollutants to more rigorous scrutiny than is currently the case. Consequently, compliance with these laws could result in significant capital expenditures, as well as other costs and liabilities, which could materially adversely affect us.

As part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, companies are now required to file with the FTC, and the DOJ certain types of agreements entered into between brand and generic pharmaceutical companies related to the settlement of patent litigation or the manufacture, marketing and sale of generic versions of branded drugs. This requirement could affect the manner in which generic drug manufacturers resolve intellectual property litigation and other disputes with brand pharmaceutical companies and could result generally in an increase in private-party litigation against pharmaceutical companies or additional investigations or proceedings by the FTC or other governmental authorities. The potential for FTC investigations and litigation and private-party lawsuits associated with arrangements between brand and generic drug manufacturers could adversely affect our business. In recent years, the FTC has expressed its intention to take aggressive action to challenge settlements that include an alleged payment from the brand company to the generic company (so-called “pay for delay” patent litigation settlements) and to call on legislators to pass stronger laws prohibiting such settlements. In 2013, the U.S. Supreme Court held that certain of such settlements could violate anti-trust laws and must be evaluated under a “rule of reason” standard of review.

We are subject to the effects of changes in statutes, regulations and interpretative guidance that may adversely affect our business and that could require us to devote increased time and resources to our compliance efforts, which may not be successful. Any changes in statutes, regulations or interpretative guidance could have a material adverse effect on our business, financial condition, prospects and results of operations.

We also cannot predict the likelihood, nature or extent of adverse government regulation that may arise from pending or future legislation or administrative action, either in the United States or abroad. If any legislative or administrative actions impose constraints on the FDA’s ability to engage in oversight and implementation activities in the normal course, our business may be negatively impacted, and if we are not able to achieve and maintain regulatory compliance, we may not be permitted to market our products or product candidates, which would adversely affect our ability to generate revenues and achieve or maintain profitability.

These risks, along with others, have the potential to materially and adversely affect our business, financial position, results of operations and prospects. Although we have developed compliance programs to address the regulatory environment, there is no guarantee that these programs will meet regulatory agency standards now or in the future. Additionally, despite our efforts at compliance, there is no guarantee that we may not be deemed to be deficient in some manner in the future. If we are deemed to be deficient in any significant way, our business, financial position and results of operations could be materially affected.

The manufacture, packaging, labeling, advertising, promotion, distribution and sale of our dietary supplements are also subject to regulation by numerous national and local governmental agencies, including the FDA and FTC. Failure to comply with regulatory requirements pertaining to any of our products, including prescription drugs and dietary supplements, may result in various types of penalties or fines. These include injunctions, product withdrawals, recalls, product seizures, fines and criminal prosecutions. Individual U.S. states also regulate dietary supplements. A state may seek to interpret claims or products presumptively valid under federal law as illegal under that state’s regulations. Any or all of these requirements could have a material adverse effect on us. In addition, the FDA’s policies may change and additional government regulations could impose more stringent product labeling and post-marketing testing and other requirements. For example, the FDA has stated that there is no specific upper limit on the amount of folic acid permitted in dietary supplements. If the FDA were to regulate products with higher amounts of folic acid as drugs, it may require us to stop marketing and selling certain dietary supplement products. There can be no assurance that the regulatory environment in which we operate will not change or that such regulatory environment, or any specific action taken against us, will not result in a material adverse effect on us.

The drug regulatory approval processes of the FDA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.

The time required to obtain approval by the FDA and comparable foreign authorities is unpredictable and typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, approval policies, regulations or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions.

Our product candidates could fail to receive regulatory approval for many reasons. For example:

- the FDA or comparable foreign regulatory authorities may disagree that our product candidates meet the criteria for the NDA or ANDA regulatory pathway or foreign regulatory pathways;
- we may be unable to demonstrate to the satisfaction of the FDA or comparable foreign regulatory authorities that a product candidate is safe and effective or chemically identical and bioequivalent to its branded reference product for its proposed indication;
- the results of any clinical trials we conduct may not meet the level of statistical significance required by the FDA or comparable foreign regulatory authorities for approval;
- we may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks;
- the FDA or comparable foreign regulatory authorities may fail to approve the manufacturing processes or facilities of third party manufacturers with which we contract for clinical and commercial supplies; and
- the approval policies or regulations of the FDA or comparable foreign regulatory authorities may change significantly in a manner rendering our clinical data insufficient for approval.

This lengthy approval process as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approval to market certain of our product candidates, which would harm our business, results of operations and prospects significantly. In addition, even if we obtain approval for our product candidates, regulatory authorities may approve any of our product candidates for fewer or more limited indications than we request or may grant approval contingent on the performance of costly post-marketing clinical trials or may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate. Any of the foregoing scenarios could harm the commercial prospects for our product candidates.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product or product candidate and could substantially increase the costs of commercializing our products and product candidates.

If we are found to have improperly promoted our products, we may be subject to restrictions on the sale or marketing of our products and significant fines, penalties and sanctions, and our image and reputation within the industry and marketplace could be harmed.

The FDA and other regulatory agencies, including regulatory authorities outside the United States, strictly regulate the marketing and promotional claims that are made about drug products. In particular, promotion for a product must be balanced, truthful, non-misleading and consistent with its labeling approved by the FDA or by regulatory agencies in other countries. We cannot prevent physicians from prescribing our products for indications or uses that are inconsistent with the approved package insert. If, however, we are found to have promoted such unapproved uses prior to the FDA's approval for an additional indication, we may, among other consequences, receive Untitled or Warning Letters and become subject to significant liability, which would materially harm our business. Both the U.S. federal government and foreign regulatory authorities have levied significant civil and criminal fines against companies and individuals for

alleged improper promotion and have entered into settlement agreements with pharmaceutical companies to limit inappropriate promotional activities. If we become the target of such an investigation or prosecution based on our marketing and promotional practices, we could face similar sanctions, which would materially harm our business. In addition, management's attention could be diverted from our business operations, significant legal expenses could be incurred and our reputation could be damaged.

Our business operations and current and future relationships with investigators, healthcare professionals, third-party payors, patient organizations and customers are subject to applicable healthcare regulatory laws, which could expose us to penalties.

Our business operations and current and future arrangements with investigators, healthcare professionals, third-party payors, patient organizations and customers subject us and our customers to broadly applicable fraud and abuse and other healthcare laws and regulations. These laws constrain the business or financial arrangements and relationships through which we conduct our operations, including how we research, market, sell and distribute our products and product candidates, if approved. Such laws include:

- the U.S. federal Anti-Kickback Statute, which prohibits, among other things, persons or entities from knowingly and willfully soliciting, offering, receiving or providing any remuneration (including any kickback, bribe, or certain rebates), directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, lease, order or arrangement for, any good, facility, item or service, for which payment may be made, in whole or in part, under U.S. federal and state healthcare programs such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;

- the U.S. federal anti-kickback prohibition known as Eliminating Kickbacks in Recovery Act or EKRA, enacted in 2018, which prohibits certain payments related to referrals of patients to certain providers (such as recovery homes, clinical treatment facilities and laboratories) and applies to services reimbursed by private health plans as well as government health care programs;

- the U.S. federal civil and criminal false claims, including the civil False Claims Act, which prohibit, among other things, including through civil whistleblower or qui tam actions, individuals or entities from knowingly presenting, or causing to be presented, to the U.S. federal government, claims for payment or approval that are false or fraudulent, knowingly making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim, or from knowingly making a false statement to avoid, decrease or conceal an obligation to pay money to the U.S. federal government. In addition, the government may assert that a claim including items and services resulting from a violation of the U.S. federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act;

- the U.S. federal law HIPAA, which created additional federal criminal statutes which prohibit, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement, in connection with the delivery of, or payment for, healthcare benefits, items or services. Similar to the U.S. federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH and its implementing regulations, which imposes certain privacy, security and breach reporting obligations, with respect to individually identifiable health information upon covered entities subject to the law, such as health plans, healthcare clearinghouses and certain healthcare providers as well as the covered entities' business associates, which are independent contractors of a covered entity that perform certain services that involve creating, using, maintaining or transmitting individually identifiable health information;

- the U.S. federal civil monetary penalties statute, which prohibits, among other things, the offering or giving of remuneration to a Medicare or Medicaid beneficiary that the person knows or should know is likely to influence

the beneficiary's selection of a particular supplier of items or services reimbursable by a federal or state governmental program;

- the U.S. FDCA, which prohibits, among other things, the adulteration or misbranding of drugs;

- the U.S. "Federal Sunshine Law," or Open Payments, and its implementing regulations, which require certain manufacturers of drugs and medical supplies that are reimbursable under Medicare, Medicaid, or the Children's Health Insurance Program, with specific exceptions, to report annually to the government information related to certain payments and other transfers of value to physicians, non-physician practitioners and teaching hospitals as well as ownership and investment interests held by physicians and their immediate family members;

- U.S. federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers;

- analogous U.S. state laws and regulations, including: state anti-kickback and false claims laws; state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the U.S. federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws and regulations that require drug manufacturers to file reports relating to pricing sales, shipping and marketing information, which includes tracking gifts and other remuneration and items of value provided to healthcare professionals and entities; state and local laws that require the registration of pharmaceutical sales representatives and reporting to certain states the shipment of opioid products into those states; and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts; and

- similar healthcare laws and regulations in the European Union, or the EU, and other jurisdictions, including reporting requirements detailing interactions with and payments to healthcare providers.

Ensuring that our internal operations and business arrangements with third parties comply with applicable healthcare laws and regulations involves substantial costs. It is possible that governmental authorities will conclude that our business practices, including our arrangements with physicians and other healthcare providers do not comply with current or future statutes, regulations, agency guidance or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of the laws described above or any other governmental laws and regulations that may apply to us, we may be subject to significant penalties, including civil, criminal and administrative penalties, damages, fines, exclusion from government-funded healthcare programs, such as Medicare and Medicaid or similar programs in other countries or jurisdictions, integrity oversight and reporting obligations to resolve allegations of non-compliance, disgorgement, individual imprisonment, contractual damages, reputational harm, diminished profits and the curtailment or restructuring of our operations. If any of the physicians or other providers or entities with whom we do business are found to not be in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs and imprisonment, which could affect our ability to operate our business. Further, defending against any such actions can be costly, time-consuming and may require significant personnel resources. Therefore, even if we are successful in defending against any such actions that may be brought against us, our business may be impaired. To the extent our patient assistance programs are found to be inconsistent with applicable laws, we may be required to restructure or discontinue such programs, or be subject to other significant penalties.

Our operations in non-U.S. jurisdictions subject us to increased regulatory oversight and regulatory, economic, social and political uncertainties, which could cause a material adverse effect on our business, financial position and results of operations.

We are subject to certain risks associated with our operations in non-U.S. jurisdictions, including Argentina and Hungary, and with having assets and operations located in non-U.S. jurisdictions. Our operations in these jurisdictions may be adversely affected by general economic conditions and economic and fiscal policy, including changes in

exchange rates and controls, interest rates and taxation policies and increased government regulation. Certain jurisdictions have, from time to time, experienced instances of civil unrest and hostilities, both internally and with neighboring countries. Rioting, military activity, terrorist attacks, or armed hostilities could cause our operations there to be adversely affected or suspended. We generally do not have insurance for losses and interruptions caused by terrorist attacks, military conflicts and wars. In addition, we operate in countries, including Argentina and Hungary, where there have been reported instances of government corruption and there are circumstances in which anti-bribery laws may conflict with some local customs and practices.

Our international operations may subject us to heightened scrutiny under the U.S. Foreign Corrupt Practices Act, or FCPA, other federal statutes and regulations, including those established by the Office of Foreign Assets Control, the Irish Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010-2018, or the Irish Money Laundering Acts, the Irish Criminal Justice (Corruption Offences) Act 2018, the U.K. Bribery Act, anti-corruption provisions in the Hungarian Criminal Code, Argentina's recently enacted Law 27.401 and other similar anti-bribery laws, and could subject us to liability under such laws despite our best efforts to comply with such laws and regulations. The FCPA prohibits any U.S. individual or business from paying, offering, authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The Irish Criminal Justice (Corruption Offences) Act 2018 renders a company liable for prosecution where any of its officers, managers, employees, agents or subsidiaries are found to be involved in corruption. The only defense is for the company to show that it took all reasonable steps and exercised all due diligence to prevent such corruption from taking place. The legislation also applies to certain international activities. The Irish Money Laundering Acts provide for criminal sanctions for engaging in "money laundering offences," which are offenses committed where a person knows or believes that (or is reckless as to whether or not) the property represents the proceeds of criminal conduct and the party is involved in concealing or disguising the true nature, source, location, disposition, movement or ownership of property, or in converting, transferring, handling, acquiring possession or using the property, or removing the property from, or bringing the property into, Ireland. In addition, the U.K. Bribery Act prohibits both domestic and international bribery, as well as bribery across both private and public sectors. An organization that "fails to prevent bribery" by anyone associated with the organization can be charged under the U.K. Bribery Act unless the organization can establish the defense of having implemented "adequate procedures" to prevent bribery. Under these laws and regulations, as well as other anti-corruption laws, anti-money-laundering laws, export control laws, customs laws, sanctions laws and other laws governing our operations, various government agencies may require export licenses, may seek to impose modifications to our business practices, including the cessation of business activities in sanctioned countries or with sanctioned persons or entities and modifications to compliance programs, which may increase our compliance costs, and may subject us to fines, penalties and other sanctions. A violation of these laws or regulations could adversely impact our business, results of operations and financial condition. As a result of our policy to comply with the FCPA, the Irish Money Laundering Acts, the Irish Criminal Justice (Corruption Offences) Act 2018, the U.K. Bribery Act and similar anti-bribery laws, we may be at a competitive disadvantage to competitors that are not subject to, or do not comply with, such laws and regulations.

We are subject to various laws protecting the confidentiality of certain patient health information, and other personal information, and our failure to comply could result in penalties and reputational damage.

Numerous U.S. states and countries in which we operate, manufacture and sell our products have, or are developing, laws protecting data privacy and the confidentiality of certain personal data, including not only patient health information but also data on employees, customers, contractors and other types of individuals with whom we interact. The global data protection landscape is rapidly evolving, and we expect that there will continue to be new and proposed laws, regulations, and industry standards concerning privacy, data protection and information security, and we cannot yet determine the impact that such future laws, regulations and standards may have on our business. In the United States, numerous federal and state laws and regulations, including state data breach notification laws, state health information privacy laws and federal and state consumer protection laws govern the collection, use, disclosure and protection of health-related and other personal information. One example of such a law is the California Consumer Privacy Act, or the CCPA, which took effect on January 1, 2020. The CCPA gives California consumers (defined to include all California residents) certain rights, including the right to receive certain details regarding the processing of their data by covered companies, the right to request deletion of their data, and the right to opt out of sales of their data. The CCPA

additionally imposes several obligations on covered companies to provide notice to California consumers regarding their data processing activities. The CCPA provides for imposition of substantial fines on companies that violate the law and also confers a private right of action on data subjects to seek statutory or actual damages for breaches of their personal information. In Europe, the EU General Data Protection Regulation, or the GDPR, which came into force on May 25, 2018, introduced new data protection requirements in the European Economic Area (EEA) and substantial fines for breaches of the data protection rules. The GDPR expanded the territorial scope of European data privacy legislation to include not only entities that are established in the EEA, but also entities that are not established in the EEA but that offer goods or services to individuals located in the EEA or monitor the behavior of individuals located in the EEA. The GDPR imposes strict obligations and restrictions on controllers and processors of personal data including, for example, expanded disclosures about how personal data is to be used, increased requirements pertaining to health data and pseudonymised (i.e., key-coded) data, mandatory data breach notification requirements and expanded rights for individuals over their personal data. This could affect our ability to collect, analyze and transfer personal data, including health data from clinical trials and adverse event reporting, or could cause our costs to increase, and harm our business and financial condition. The GDPR also provides for the assessment of fines on entities that violate the regulation of up to 20 million Euros or four percent of annual turnover and provides data subjects a private right of action to seek compensation for damages suffered as a result of violations of the regulation.

While the GDPR, as a directly effective regulation, was designed to harmonize data protection law across the EEA, it does permit member states to legislate in many areas (particularly with regard to the processing of genetic, biometric or health data and the processing of personal data for research purposes), meaning that inconsistencies between different member states will still arise. EEA member states have their own regimes on medical confidentiality and national and EU-level guidance on implementation and compliance practices is often updated or otherwise revised, which adds to the complexity of processing personal data in the EEA.

European data protection law generally prohibits the transfer of personal data to countries outside of the EEA that are not considered by the European Commission to provide an adequate level of data protection, unless there are specific frameworks or mechanisms in place, such as the European Commission approved standard contractual clauses, or if very narrow legal exceptions (such as data subject consent) apply. Our ability to receive data from the EEA could be affected by changes in law as a result of a future review of these transfer mechanisms by European regulators under the GDPR, as well as challenges to these mechanisms in the European courts.

In recent years, U.S. and European regulators have expressed concern over electronic marketing and the use of third-party cookies, web beacons and similar technology for online behavioral advertising. In the EEA, informed consent is required for the placement of many types of cookies on a user’s device, such as cookies used for online behavioral advertising, as well as for the sending of many types of electronic marketing communications. The current EU laws that cover the use of cookies and similar technology and marketing online or by electronic means are under reform. A draft of the new ePrivacy Regulation is currently going through the European legislative process. Unlike the current ePrivacy Directive, the draft ePrivacy Regulation will be directly implemented into the laws of each of the EU member states, without the need for further enactment. When implemented, it is expected to alter rules on third-party cookies, web beacons and similar technology for online behavioral advertising and to impose stricter requirements on companies using these tools. The current provisions of the draft ePrivacy Regulation also significantly increase penalties.

Failure to comply with data protection laws and regulations could result in government enforcement actions, which may involve civil and criminal penalties, private litigation and/or adverse publicity and could negatively affect our business, financial condition and results of operations. Claims that we have violated individuals’ privacy rights or breached our contractual obligations, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business, financial condition and results of operations.

We face potential liability related to the privacy of health information we obtain from clinical trials sponsored by us.

Most healthcare providers, including research institutions from which we obtain patient health information, are subject to privacy and security regulations promulgated under HIPAA, as amended by HITECH. We are not currently classified as a covered entity or business associate under HIPAA and thus are not subject to its requirements or penalties. However, any person may be prosecuted under HIPAA’s criminal provisions either directly or under aiding-and-abetting or

conspiracy principles. Consequently, depending on the facts and circumstances, we could face substantial criminal penalties if we knowingly receive individually identifiable health information from a HIPAA-covered healthcare provider or research institution that has not satisfied HIPAA's requirements for disclosure of individually identifiable health information. In addition, we may maintain sensitive personally identifiable information, including health information that we receive throughout the clinical trial process or in the course of our research collaborations. As such, we may be subject to state laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, which is a broader class of information than the health information protected by HIPAA. Our clinical trial programs outside the United States may implicate international data protection laws, including the GDPR.

Our activities outside the United States impose additional compliance requirements and generate additional risks of enforcement for noncompliance. Failure by our CROs and other third-party contractors to comply with the strict rules on the transfer of personal data outside of the European Union into the United States may result in the imposition of criminal and administrative sanctions on such collaborators, which could adversely affect our business. Furthermore, certain health privacy laws, data breach notification laws and consumer protection laws may apply directly to our operations and/or those of our collaborators and may impose restrictions on our collection, use and dissemination of individuals' health information. Moreover, patients about whom we or our collaborators obtain health information, as well as the providers who share this information with us, may have statutory or contractual rights that limit our ability to use and disclose the information. We may be required to expend significant capital and other resources to ensure ongoing compliance with applicable privacy and data security laws. Claims that we have violated individuals' privacy rights or breached our contractual obligations, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business. If we or third-party CROs or other contractors or consultants fail to comply with applicable federal, state or local regulatory requirements, we could be subject to a range of regulatory actions that could affect our or our contractors' ability to develop and commercialize our product candidates and could harm or prevent sales of any affected products that we are able to commercialize, or could substantially increase the costs and expenses of developing, commercializing and marketing our products. Any threatened or actual government enforcement action could also generate adverse publicity and require that we devote substantial resources that could otherwise be used in other aspects of our business. Increasing use of social media could give rise to liability, breaches of data security or reputational damage.

Our reporting and payment obligations under the Medicaid drug rebate program and other governmental purchasing and discount or rebate programs are complex and may involve subjective decisions. Any determination that we have failed to comply with those obligations could subject us to penalties and sanctions, which could have a material adverse effect.

The requirements regarding price reporting and discount or rebate obligations applicable to the various government pricing and reimbursement programs, such as the Medicaid Drug Rebate Program, are complex.

Our calculations and methodologies related to government pricing reporting are subject to review and challenge by the applicable governmental agencies, and it is possible that such reviews could result in material changes. In addition, because our processes for these calculations and the judgments involved in making these calculations involve, and will continue to involve, subjective decisions and complex methodologies, these calculations are subject to the risk of errors. For example, we were subject to an audit by the Office of Inspector General related to purported overcharges with respect to the prices of VERT that were purchased by the U.S. Department of Veterans Affairs. Although we believe that the prices we charged in these transactions were appropriate and have settled this matter, an adverse determination of other audits could result in the imposition of significant financial penalties, which could have a material adverse impact on our results of operations and financial condition.

Any governmental agencies that have commenced (or that may commence) an investigation of our company could impose, based on a claim of violation of fraud and false claims laws or otherwise, civil or criminal sanctions, including fines, penalties and possible exclusion from federal health care programs (including Medicaid and Medicare). Some of the applicable laws may impose liability even in the absence of specific intent to defraud. Furthermore, there may be ambiguity with regard to how to properly calculate and report payments, and even in the absence of any such ambiguity, a governmental authority could take a position contrary to a position that we have taken and may impose civil or criminal sanctions on us. Any such penalties, sanctions, or exclusion from federal health care programs could have a

material adverse effect on our business, financial position and results of operations. From time to time we conduct routine reviews of our government pricing calculations. These reviews may have an impact on government price reporting and rebate calculations used to comply with various government regulations regarding reporting and payment obligations.

Many government and third-party payors, including Medicare, Medicaid, MCOs and others, reimburse doctors and others for the purchase of certain prescription drugs based on a drug's average wholesale price, or AWP. In the past several years, state and federal government agencies have conducted ongoing investigations of manufacturers' reporting practices with respect to AWP, in which the agencies have suggested that reporting of inflated AWPs by manufacturers have led to excessive payments for prescription drugs. We can give no assurance that we will be able to resolve any future actions that may be brought against us on terms that we deem reasonable, or that such settlements or adverse judgments, if entered, will not exceed the amount of any reserve. Accordingly, such actions could adversely affect us and may have a material adverse effect on our business, results of operations, financial condition and cash flows.

Increased scrutiny around the abuse of opioids, including law enforcement concerns over diversion and legislative and regulatory efforts to combat abuse, could impact some of our pharmaceutical products, and could reduce the demand and increase the cost, burden and liability associated with the commercialization of opioids.

Law enforcement and regulatory agencies may apply policies that seek to limit the availability of opioids. Such efforts may affect our opioid products, such as tramadol extended-release capsules and hydromorphone ER (hydromorphone hydrochloride extended-release tablets). For the year ended December 31, 2020, our opioid products represented 17% of our total revenues. Aggressive enforcement by the DEA or other regulators, unfavorable publicity regarding, for example, the use or misuse of opioid drugs or the limitations of abuse-deterrent formulations, litigation, public inquiries or investigations related to the abuse, sales, marketing, distribution or storage of our products could harm our reputation, result in financial consequences in the form of litigation costs, fines, penalties, damages, and other costs, or suspension or revocation of licenses necessary to manufacture and distribute controlled substances. Such negative publicity could also reduce the potential size of the market for our drugs and decrease the total revenues we are able to generate from sales. In addition, efforts by the FDA and other regulatory bodies to combat the abuse of opioids may negatively impact the market for our products. The FDA continues to evaluate extended-release and abuse-deterrent opioids in the post-market setting. We expect that the FDA will continue to scrutinize the impact of abuse-deterrent opioids and in the future could impose further restrictions to products currently on the market, which may include changing labeling, imposing additional prescribing restrictions, or seeking a product's removal from the market, which could have an adverse effect on our financial performance.

In addition, some states, including the Commonwealths of Massachusetts and Virginia and the States of New York, Ohio, Arizona, Maine, New Hampshire, Vermont, Rhode Island, Colorado, Wisconsin, Alabama, South Carolina, Washington and New Jersey, have recently enacted, intend to enact, or have considered legislation or regulations designed to, among other things, limit the duration and quantity of initial prescriptions of immediate-release forms of opiates, mandate the use by prescribers of prescription drug databases and mandate prescriber education. The attorneys general from nearly every state have also either opened an investigation into or filed a lawsuit against pharmaceutical manufacturers and distributors of opioid products.

At the state and local level, a number of states, cities, counties, Native American tribes, third party payors, hospitals and other health service providers, schools, individuals and guardians of children diagnosed with neonatal abstinence syndrome have brought separate lawsuits against various pharmaceutical companies marketing and selling opioid pain medications, alleging misleading or otherwise improper promotion of opioid drugs to physicians and consumers. Over 2,400 of these lawsuits have been consolidated in multi-district litigation in the Northern District of Ohio in *In re: National Prescription Opiate Litigation*, 1:17md2804, or Federal Opioid MDL. The outcome of those bellwether cases will be used to evaluate the settlement and litigation value of the remaining coordinated cases. We are not named in any of the cases pending in the multi-district litigation, but cases continue to be filed in federal courts across the country and continue to be consolidated into the Federal Opioid MDL. Cases against pharmaceutical companies marketing and selling opioid pain medications, alleging misleading or otherwise improper promotion of opioids drugs, also continue to be separately litigated in state courts across the country. For example, on August 26, 2019, an Oklahoma court ordered Johnson & Johnson to pay $572 million, which was later reduced to $465 million, for its role in the state's opioid crisis,

including for violating Oklahoma's public nuisance law. On March 15, 2018, a coalition of local governments in Arkansas, comprised of 75 counties and 15 cities, jointly filed a lawsuit in the Circuit Court of Crittenden County, Arkansas against more than 60 defendants, including us. The summons and complaint that we received on April 30, 2018 claimed that we and the other defendants, including prescription opioid manufacturers, distributors and retailers, and several physicians, were negligent and violated public nuisance law as well as various Arkansas controlled substance laws as a result of alleged opioid sales and marketing practices. The lawsuit sought damages and restitution for past and prospective spending related to opioid use, as well as punitive and treble damages. On July 17, 2018, the court entered an order in the Arkansas litigation voluntarily dismissing us from the lawsuit without prejudice. If similar federal or state lawsuits are filed against us in the future, we may be subject to excessive litigation or settlement costs, negative publicity, diversion of management time and attention, decreased sales or removal of one or more of our opioid products from the market, which could have a material adverse effect on our business, results of operations and financial condition. The risk of inclusion in the Federal Opioid MDL may intensify the impact of negative publicity and could lead to a proliferation of lawsuits naming us.

Additionally, in March 2017, President Trump announced the creation of a commission, through the Office of National Drug Control Policy, to make recommendations to the President on how to best combat opioid addiction and abuse. In August 2017, the commission issued a preliminary report calling on President Trump to officially declare the crisis of opioid abuse a national emergency. On October 26, 2017, President Trump declared the opioid crisis a ‘‘national public health emergency.’’ The commission's final report was released in early November 2017. In July 2017, the Pharmaceutical Care Management Association, a trade association representing pharmacy benefit managers, wrote a letter to the commissioner of the FDA in which it expressed support for, among other things, the Centers for Disease Control and Prevention, or CDC, guidelines and a seven-day limit on the supply of opioids for acute pain. In September 2017, CVS Pharmacy announced that it would only fill first time opioid prescriptions for acute pain for a seven day supply. State legislative initiatives may take various forms, including attempts to tax opioid products. For instance, in 2018, New York enacted a state law (The Opioid Stewardship Act) which intended to raise $600 million from opioid manufacturers and distributors by taxing morphine milligram equivalents. A federal district court subsequently determined that the law was unconstitutional because the law violated the commerce clause. That ruling is currently on appeal. These and other similar initiatives and actions, whether taken by governmental authorities or other industry stakeholders, may result in the reduced prescribing and use of opioids, including our opioid products, which could adversely affect our ability to commercialize our opioid products, and in turn adversely affect our business, financial condition and results of operations.

Some of our products, including methylphenidate ER, are stimulant products and face intense competition from existing or future stimulant products and also have the potential for misuse, which could reduce the demand and increase the cost, burden and liability associated with the commercialization of such products.

Some of our products and product candidates are stimulants, including methylphenidate ER. The markets for methylphenidate ER and other stimulants to treat ADHD are well developed and populated with established drugs marketed by large pharmaceutical, biotechnology and generic drug companies. There have also been efforts to develop stimulant products that are less prone to abuse, and such products may compete with our products. Our competitors may succeed in developing, acquiring or licensing, on an exclusive basis or otherwise, drug products or drug delivery technologies that are more effective, less costly or less prone to abuse than our stimulant products, or any product candidate that we may develop. In addition, because of the potential for abuse of stimulant products, regulatory agencies may develop and apply policies that seek to limit the abuse of such stimulant products. If our competitors develop and market stimulant products that are more effective, safer or less expensive than our product or future product candidates, if any, or if abuse of our stimulant products result in increased liability or reduced demand for such products, this could impact our ability to generate revenues from such stimulant products and will adversely affect our business and financial condition.

The DEA limits production of some of our products and limits the availability of certain of our products' active ingredients. Procurement and production quotas set by the DEA may not be sufficient to allow us to complete clinical trials or to meet commercial demand, and may result in clinical delays.

The DEA regulates controlled substances as Schedule I, II, III, IV or V substances, with Schedule I substances considered to present the highest risk of substance abuse and Schedule V substances the lowest risk. Methylphenidate included in our methylphenidate ER and M-72 products and hydromorphone included in our hydromorphone ER product are listed as Schedule II drugs and tramadol hydrochloride included in our ConZip product is listed as a Schedule IV drug by the DEA under the Controlled Substances Act. The manufacture, shipment, storage, sale and use of Schedule II drugs are subject to a high degree of regulation. For example, Schedule II drug prescriptions generally must be signed by a physician and may not be refilled without a new prescription. Substances in Schedule IV are considered to have a lower potential for abuse relative to substances in Schedule II. A prescription for controlled substances in Schedule IV may be issued by a practitioner through oral communication, in writing, or by facsimile to the pharmacist, and may be refilled if so authorized on the prescription or by call-in. In the future, our other potential products may also be listed by the DEA as controlled substances.

Furthermore, the DEA limits the availability of the active ingredients in certain of our current drug products and sets a quota on the production of these products. We, or our contract manufacturing organizations, must annually apply to the DEA for procurement and production quotas in order to obtain these substances and produce our products. As a result, our procurement and production quotas may not be sufficient to meet commercial demand or to complete clinical trials, which may result in delays in clinical trials or inability to meet commercial demand. Moreover, the DEA may adjust these quotas from time to time during the year. Any delay or refusal by the DEA to establish or modify our quotas for controlled substances could delay or stop clinical trials or product launches, or could cause trade inventory disruptions, which could have a material adverse effect on our business, financial position, results of operations and cash flows.

We are susceptible to product liability claims that may not be covered by insurance, which, if successful, could require us to pay substantial sums.

Like all pharmaceutical companies, we face the risk of loss resulting from, and the adverse publicity associated with, product liability lawsuits, whether or not such claims are valid. We likely cannot avoid such claims. Unanticipated side effects or unfavorable publicity concerning any of our products would likely have an adverse effect on our ability to achieve acceptance by prescribing physicians, managed care providers, pharmacies and other retailers, customers, patients and clinical trial participants. Even unsuccessful product liability claims could require us to spend money on litigation, divert management's time, damage our reputation and impair the marketability of our products. In addition, although we believe that we have adequate product liability insurance coverage, we cannot be certain that our insurance will, in fact, be sufficient to cover such claims or that we will be able to obtain or maintain adequate insurance coverage in the future at acceptable prices. A successful product liability claim that is excluded from coverage or exceeds our policy limits could require us to pay substantial sums. In addition, insurance coverage for product liability may become prohibitively expensive in the future or, with respect to certain high-risk products, may not be available at all. For example, some product liability insurance carriers exclude from coverage claims related to abuse or misuse of our opioid products, such as hydromorphone ER. As a result we may not be able to maintain adequate product liability insurance coverage to mitigate the risk of large claims, or we may be required to maintain a larger self-insured retention than we would otherwise choose.

Manufacturing or quality control problems may damage our reputation for quality production, require costly remedial activities and negatively impact our business, results of operations and financial condition.

As a pharmaceutical company, we are subject to substantial regulation by various governmental authorities. For instance, we must comply with requirements of the FDA and other healthcare regulators with respect to the manufacture of pharmaceutical products. We must register our facilities, whether located in the United States or elsewhere, with the FDA as well as regulators outside the United States. Also, our products, including our investigational products, must be made in a manner consistent with applicable cGMP regulations, or similar standards in each territory in which we manufacture. The failure of one of our facilities, or a facility of one of our third-party suppliers, to comply with

applicable laws and regulations may lead to breach of representations made to our customers or to regulatory or government action against us related to products made in that facility.

In addition, the FDA and other agencies periodically inspect our manufacturing facilities. Following an inspection, an agency may issue a notice listing conditions that are believed to violate cGMP or other regulations, or a Warning Letter for violations of "regulatory significance" that may result in enforcement action if not promptly and adequately corrected. We have in the past received Warning Letters from the FDA regarding certain operations. For example, in May 2017, the FDA issued a Warning Letter to us for violation of post-marketing adverse drug experience reporting requirements, specifically for (i) failing to develop written procedures for the surveillance, receipt, evaluation, and reporting of post-marketing adverse drug experiences, and (ii) failing to submit periodic adverse drug experience reports annually. This Warning Letter was based on an October-November 2016 FDA inspection. We have been providing periodic updates to FDA outlining our corrective steps taken in response to this Warning Letter. In July 2018, the FDA conducted an inspection of our pharmacovigilance function as follow up to the May 10, 2017 Warning Letter. On October 25, 2018, the FDA sent us a letter stating that it completed an evaluation of our corrective actions and confirming that we had addressed the violations contained in the Warning Letter but we cannot be assured that the FDA will continue to be satisfied with our quality control and manufacturing systems and standards with respect to this or other matters. Failure to comply strictly with these regulations and requirements may damage our reputation and lead to financial penalties, compliance expenditures, the recall or seizure of products, total or partial suspension of production or distribution, withdrawal or suspension of the applicable regulator's review of our submissions, enforcement actions, injunctions and criminal prosecution. Further, other federal agencies, our customers and partners in our development, manufacturing, collaboration and other partnership agreements with respect to our products and services may take any such FDA observations or Warning Letters into account when considering the award of contracts or the continuation or extension of such partnership agreements. The delay and cost of remedial actions, or obtaining approval to manufacture at a different facility, could negatively impact our business. Any failure by us to comply with applicable laws and regulations or any actions by the FDA and other agencies as described above could have a material adverse effect on our business, financial position and results of operations.

The illegal distribution and sale by third parties of counterfeit versions of our products or of stolen products could have a negative impact on our reputation and a material adverse effect on our business, results of operations and financial condition.

Third parties could illegally distribute and sell counterfeit versions of our products, which do not meet the rigorous manufacturing and testing standards that our products undergo. Counterfeit products are frequently unsafe or ineffective, and can be life-threatening. Counterfeit medicines may contain harmful substances, the wrong dose of the API or no API at all. However, to distributors and users, counterfeit products may be visually indistinguishable from the authentic version.

Reports of adverse reactions to counterfeit drugs or increased levels of counterfeiting could materially affect patient confidence in the authentic product. It is possible that adverse events caused by unsafe counterfeit products will mistakenly be attributed to the authentic product. In addition, thefts of inventory at warehouses, plants or while in-transit, which are not properly stored and which are sold through unauthorized channels could adversely impact patient safety, our reputation and our business.

Public loss of confidence in the integrity of our pharmaceutical products as a result of counterfeiting or theft could have a material adverse effect on our reputation, business, results of operations and financial condition.

Our employees and independent contractors, including consultants, vendors and any third parties we may engage in connection with development and commercialization may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could harm our business.

Misconduct by our employees and independent contractors, including consultants, vendors and any third parties we may engage in connection with development and commercialization, could include intentional, reckless or negligent conduct or unauthorized activities that violate: (i) the laws and regulations of the FDA and other similar regulatory authorities, including those laws that require the reporting of true, complete and accurate information to such authorities;

(ii) manufacturing standards; (iii) data privacy, security, fraud and abuse and other healthcare laws and regulations; or (iv) laws that require the reporting of true, complete and accurate financial information and data. Specifically, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Activities subject to these laws could also involve the improper use or misrepresentation of information obtained in the course of clinical trials, creation of fraudulent data in preclinical studies or clinical trials or illegal misappropriation of drug product, which could result in regulatory sanctions and cause serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with such laws or regulations. Additionally, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations.

Risks related to our indebtedness

Our substantial indebtedness could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry and prevent us from meeting obligations on our indebtedness.

We currently have a substantial amount of indebtedness. As of December 31, 2020, our total indebtedness was $219.5 million (net of deferred financing costs), with unused commitments of $50.0 million under the senior secured credit facilities.

Subject to the limits contained in our senior secured credit facilities, we may incur substantial additional indebtedness from time to time to finance working capital, capital expenditures, investments or acquisitions, or for other purposes. If we do so, the risks related to this high level of debt could intensify. Specifically, the high level of debt could have important consequences, including, but not limited to:

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

The terms of the credit agreement governing our senior secured credit facilities, or the Credit Agreement, restrict our current and future operations, particularly our ability to respond to changes or to take certain actions.

The Credit Agreement contains a number of restrictive covenants that impose significant operating and financial restrictions on our operating subsidiaries and may limit our ability to engage in acts that may be in our long-term best interest, including restrictions on our ability to:

- incur additional indebtedness;
- pay dividends or make other distributions or repurchase or redeem our share capital;
- prepay, redeem or repurchase certain debt;
- make loans and investments;
- sell assets or enter into sale and lease-back transactions;
- incur liens;
- enter into transactions with affiliates;
- alter the businesses we conduct;
- enter into agreements restricting our subsidiaries' ability to pay dividends;
- consolidate, merge or sell all or substantially all of our assets;
- amend or modify the organizational documents of our operating subsidiaries;
- amend or modify certain indebtedness of our operating subsidiaries;
- change our fiscal year; and
- enter into certain derivative transactions.

In addition, the restrictive covenants in the Credit Agreement require us to comply with certain financial covenants. As of the end of each fiscal quarter, our operating subsidiaries must (i) maintain a Total Leverage Ratio (as defined in the Credit Agreement) no greater than 4.50:1.00 and each subsequent fiscal quarter and (ii) maintain a Consolidated Fixed Charge Coverage Ratio not less than 1.25:1.00. Our ability to meet these financial ratios can be affected by events beyond our control.

A breach of the covenants under the Credit Agreement could result in an event of default under the Credit Agreement. Such an event of default may allow the creditors to accelerate the related debt and may result in the acceleration of any other debt to which a cross-acceleration or cross-default provision applies which could have a material adverse effect on our business, operations and financial results. In addition, an event of default under the Credit Agreement would permit the lenders under the senior secured credit facilities to terminate all commitments to extend further credit under that facility. Furthermore, if we were unable to repay the amounts due and payable under the senior secured credit facilities, those lenders could proceed against the collateral granted to them to secure that indebtedness which could force us into bankruptcy or liquidation. In the event our lenders accelerate the repayment of the borrowings, we and our subsidiaries may not have sufficient assets to repay that indebtedness. Any acceleration of amounts due under the Credit Agreement

or the exercise by the applicable lenders of their rights under the related security documents would likely have a material adverse effect on us. As a result of these restrictions, we may be:

- limited in how we conduct our business;
- unable to raise additional debt or equity financing to operate during general economic or business downturns; or
- unable to compete effectively or to take advantage of new business opportunities. These restrictions may affect our ability to grow in accordance with our strategy.

We may not be able to generate sufficient cash to service all of our indebtedness and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.

Our ability to make scheduled payments on or refinance our debt obligations depends on our financial condition and operating performance, which are subject to prevailing economic and competitive conditions and to certain financial, business, legislative, regulatory and other factors beyond our control. We may be unable to maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness.

We expect our near term levels of cash flow to be negatively affected by price competition on methylphenidate ER, VERT and Lorzone, and increased expenses associated with new product launches. As a result, we could exhaust or significantly decrease our available cash resources, and we may not be able to generate sufficient cash to service our debt obligations. This could, among other things, force us to raise additional funds or force us to reduce our expenses through cost cutting measures either of which could have a material adverse effect on our business. If our cash flows and capital resources are insufficient to fund our debt service obligations, we could face substantial liquidity problems and could be forced to reduce or delay investments and capital expenditures or to dispose of material assets or operations, seek additional debt or equity capital or restructure or refinance our indebtedness. We may not be able to effect any such alternative measures on commercially reasonable terms or at all and, even if successful, those alternative actions may not allow us to meet our scheduled debt service obligations. The Credit Agreement restricts our ability to dispose of assets and use the proceeds from those dispositions and also restricts our ability to raise debt or equity capital to be used to repay other indebtedness when it becomes due. We may not be able to consummate those dispositions or to obtain proceeds in an amount sufficient to meet any debt service obligations when due.

Our inability to generate sufficient cash flows to satisfy our debt obligations, or to refinance our indebtedness on commercially reasonable terms or at all, would materially and adversely affect our financial position and results of operations and our ability to satisfy our obligations, including our indebtedness.

If we cannot make scheduled payments on our debt, we will be in default and, as a result:

- our debt holders could declare all outstanding principal and interest to be due and payable;
- the lenders under the senior secured credit facilities could terminate their commitments to loan us money and foreclose against the assets securing the borrowings; and
- we could be forced into bankruptcy or liquidation.

We will require a significant amount of cash to service our indebtedness. The ability to generate cash or refinance our indebtedness as it becomes due depends on many factors, some of which are beyond our control.

Our ability to make scheduled payments on, or to refinance our respective obligations under, our indebtedness and to fund planned capital expenditures and other corporate expenses will depend on the ability of our subsidiaries to make distributions, dividends or advances to us, which in turn will depend on our subsidiaries' future operating performance and on economic, financial, competitive, legislative, regulatory and other factors and any legal and regulatory

restrictions on the payment of distributions and dividends to which they may be subject. Many of these factors are beyond our control. We cannot be certain that our business will generate sufficient cash flow from operations or that future borrowings will be available to us in an amount sufficient to enable us to satisfy our respective obligations under our indebtedness or to fund our other needs. In order for us to satisfy our obligations under our indebtedness and fund planned capital expenditures, we must continue to execute our business strategy. If we are unable to do so, we may need to reduce or delay our planned capital expenditures, implement certain cost-saving initiatives, divest assets or refinance all or a portion of our indebtedness on or before maturity. Significant delays in our planned capital expenditures, implementing cost savings measures or divestiture of assets may materially and adversely affect our future revenue prospects. In addition, we cannot assure our creditors that we will be able to refinance any of our indebtedness on commercially reasonable terms or at all.

We are a holding company with nominal net worth and will depend on dividends and distributions from our subsidiaries, which are restricted from paying dividends and distributions to us pursuant to the terms of our existing indebtedness and may be restricted pursuant to the terms of future indebtedness, which as a result may restrict us from paying dividends to you.

We are a holding company with nominal net worth. We do not have any material assets or conduct any business operations other than our investments in our subsidiaries. Our business operations are conducted primarily out of our indirect operating subsidiaries, Vertical Pharmaceuticals, LLC, Trigen Laboratories, LLC, RVL Pharmaceuticals, Inc. and Osmotica Pharmaceutical US LLC. As a result, notwithstanding any restrictions on payment of dividends under our existing indebtedness or under Irish law, our ability to pay dividends, if any, will be dependent upon cash dividends and distributions or other transfers from our subsidiaries. Payments to us by our subsidiaries will be contingent upon their respective earnings and subject to any limitations on the ability of such entities to make payments or other distributions to us. The Credit Agreement restricts our subsidiaries from paying dividends and making distributions to its direct or indirect equity holders unless there are available exceptions thereunder. If we are not able to meet such available exceptions that would allow our subsidiaries to pay a dividend or make a distribution to us, and which would then allow us to pay a dividend to you, then we will need to obtain a waiver from the lenders under the senior secured credit facilities.

Despite our current level of indebtedness, we and our subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks to our financial condition described above.

We and our subsidiaries may be able to incur significant additional indebtedness in the future. Although the Credit Agreement contains restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of qualifications and exceptions, and the additional indebtedness incurred in compliance with these restrictions could be substantial. These restrictions also will not prevent us from incurring obligations that do not constitute indebtedness. If new debt is added to our current debt levels, the related risks that we and the guarantors now face could intensify.

Our variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.

Borrowings under the senior secured credit facilities are at variable rates of interest and expose us to interest rate risk. Historically, we have elected that Borrowings under the senior secured credit facilities bear interest based upon the London Inter-Bank Offered Rate, or LIBOR. The senior secured credit facilities include a LIBOR floor of 1.00%. The interest period can be set at one, two, three or six months (or, to the extent available to all relevant lenders, twelve months or a shorter period) as selected by us in accordance with the terms of the senior secured credit facilities. An increase of 1.00% in LIBOR would result in a $2.2 million increase in our annual interest expense associated with the senior secured credit facilities.

Risks related to our ordinary shares

We qualify both as an "emerging growth company" and as a "smaller reporting company," and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies and smaller reporting companies will make our ordinary shares less attractive to investors.

We are an emerging growth company, as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, but not limited to, (i) not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, (ii) reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and (iii) exemptions from the requirements of holding a non-binding advisory vote on executive compensation.

We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier, including if the market value of our ordinary shares held by non-affiliates exceeds $700.0 million as of any June 30 before that time or if we have total annual gross revenues of $1.07 billion or more during any fiscal year before that time, in which cases, we would no longer be an emerging growth company as of the following December 31 or, if we issue more than $1.0 billion in non-convertible debt during any three-year period before that time, we would cease to be an emerging growth company immediately. In addition, we qualify as a "smaller reporting company," which allows us to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding financial statements, executive compensation in our periodic reports and proxy statements. We cannot predict if investors will find our ordinary shares less attractive because we may rely on these exemptions. If some investors find our ordinary shares less attractive as a result, there may be a less active trading market for our ordinary shares and our share price may be more volatile. When these exemptions cease to apply, we expect to incur additional expenses and devote increased management effort toward ensuring compliance with them, and we cannot predict or estimate the amount or timing of such additional costs.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Investment funds affiliated with Avista Capital Partners, or Avista, and affiliates of Altchem Limited, or Altchem, have significant influence over us, including control over decisions that require the approval of shareholders, which could limit your ability to influence the outcome of matters submitted to shareholders for a vote.

We are currently controlled by Avista and Altchem, who we refer to as our Sponsors. As of March 1, 2021, investment funds affiliated with the Sponsors beneficially owned approximately 64.5% of our outstanding ordinary shares. For as long as the Sponsors own or control at least a majority of our outstanding voting power, they will have the ability to exercise substantial control over all corporate actions requiring shareholder approval, irrespective of how our other shareholders may vote, including over the election and removal of directors, any amendment to our Constitution, the approval of any merger or other significant corporate transaction, including a sale of substantially all of our assets. Even if their ownership falls below 50%, they will continue to be able to strongly influence or effectively control our decisions so long as they continue to hold a significant portion of our ordinary shares. In addition, each of the Sponsors has a contractual right to nominate two directors for so long as such Sponsor owns at least 20% of our outstanding ordinary shares, and one director for so long as such Sponsor owns less than 20% but more than 10% of our outstanding ordinary shares.

Additionally, the Sponsors' interests may not align with the interests of our other shareholders. Avista and Altchem are in the business of making investments in companies and may acquire and hold interests in businesses that compete directly or indirectly with us. The Sponsors may also pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us.

We are a "controlled company" within the meaning of the rules of the Nasdaq Stock Market and, as a result, qualify for, and rely on, exemptions from certain corporate governance requirements. As a result, you do not have the same protections afforded to shareholders of companies that are subject to such requirements.

Because the Sponsors control a majority of the voting power of our outstanding ordinary shares, we are a "controlled company" within the meaning of the corporate governance standards of the Nasdaq Stock Market. Under these rules, a company of which more than 50% of the voting power for the election of directors is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements, including the requirements that, within one year of the date of the listing of our ordinary shares:

- we have a board of directors that is composed of a majority of "independent directors," as defined under the rules of the Nasdaq Stock Market;
- we have a compensation committee that is composed entirely of independent directors; and
- we have a nominating and corporate governance committee that is composed entirely of independent directors.

We intend to continue to utilize all of these exemptions. Accordingly, for so long as we are a "controlled company," you will not have the same protections afforded to shareholders of companies that are subject to all of the corporate governance requirements of the Nasdaq Stock Market. Our status as a controlled company could make our ordinary shares less attractive to some investors or otherwise harm our share price.

Our directors who have relationships with Avista or Altchem may have conflicts of interest with respect to matters involving our company.

Two of our seven directors are affiliated with Avista and two directors are affiliated with Altchem. In addition, our Chief Executive Officer, Brian Markison, serves as an operating executive at Avista Capital Partners. Our directors have fiduciary duties to us and, in addition, have duties to Avista or Altchem, as applicable. As a result, these directors may face real or apparent conflicts of interest with respect to matters affecting both us and Avista or Altchem, as applicable, whose interests, in some circumstances, may be adverse to ours.

Your percentage ownership in us may be diluted in the future, which could reduce your influence over matters on which shareholders vote.

In the future, your percentage ownership in us may be diluted because of equity issuances for acquisitions, capital market transactions or otherwise, including equity awards that we have granted or may grant in the future to directors, officers and employees. From time to time, we may issue additional options or other share based awards to our directors, officers and employees under our benefits plans.

Pursuant to our Articles of Association, our board of directors has the authority, without action or vote of our shareholders and on a non-pre-emptive basis, to issue all or any part of our authorized but unissued ordinary shares, and one or more classes or series of preferred shares having such powers, preferences and relative, participating, optional and other special rights, including preferences over our ordinary shares respecting dividends and distributions, as our board of directors generally may determine. The terms of one or more classes or series of preferred shares could dilute the voting power or reduce the value of our ordinary shares. For example, our board of directors could grant the holders of preferred shares the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences our board of directors could assign to holders of preferred shares could affect the residual value of our ordinary shares.

Issuances of ordinary shares or voting preferred shares in the manner outlined above may reduce your influence over matters on which our shareholders vote.

Currently there is a limited public market for our securities, which may limit your ability to sell your shares.

Although our ordinary shares are listed on the Nasdaq Global Select Market under the symbol ‘‘OSMT,’’ our shares have been thinly traded, and there may not be an active trading market for our shares. A public trading market having the desirable characteristics of depth, liquidity and orderliness depends upon the existence of willing buyers and sellers at any given time, such existence being dependent upon the individual decisions of buyers and sellers over which neither we nor any market maker has control. The failure of an active and liquid trading market to continue would likely have a material adverse effect on the value of our ordinary shares. The market price of our ordinary shares may decline and you may not be able to sell our ordinary shares at or above the price you paid for them, or at all. An inactive market may also impair our ability to raise capital to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

Registration of the beneficial interests in our shares subjects us and the holders of such beneficial interests to certain risks.

We entered into a Depository Agreement, or DTC Agreement, with the Depository Trust Company, or DTC, in connection with the listing and trading of our shares on the Nasdaq Global Select Market. In accordance with the DTC Agreement, following completion of the initial public offering of our shares, DTC’s nominee, Cede & Co., was registered as the legal owner of certain of our ordinary shares in the Irish shareholder register that we are required to maintain pursuant to the Companies Act 2014 of Ireland, or the Irish Companies Act. Under the DTC Agreement, DTC credited the beneficial interests in those ordinary shares in book entry form to its participants. Accordingly, while the ordinary shares issued in accordance with Irish law are listed and traded on the Nasdaq Global Select Market, it is the beneficial interests in such ordinary shares that are settled and held in DTC. In accordance with market practice and system requirements of the Nasdaq Global Select Market, the ordinary shares are listed and traded on the Nasdaq Global Select Market under the category of “Common Share.” In respect of beneficial interests in ordinary shares held in DTC, such beneficial ownership would not necessarily be recognized by an Irish court. As such, investors holding beneficial interests in our ordinary shares within DTC may have no direct rights against us and our officers and directors and may be required to obtain the cooperation of DTC in order to assert claims against us and our officers and directors, and to look solely to DTC for the payment of any dividends, for exercise of voting rights attaching to the underlying ordinary shares and for all other rights arising in respect of the underlying ordinary shares. We cannot guarantee that DTC will be able to continue to execute its obligations under the DTC Agreement, including that the beneficial owners of the ordinary shares within DTC will receive notice of general meetings in time to instruct DTC to either effect registration of their ordinary shares or otherwise vote their ordinary shares in the manner desired by such beneficial owners. Any such failure may, inter alia, limit the access for, delay or prevent, such beneficial shareholders from being able to exercise the rights attaching to the underlying ordinary shares.

DTC has certain termination rights under the DTC Agreement. In the event that the DTC Agreement is terminated, we will use our reasonable best efforts to enter into a replacement agreement for purposes of permitting the uninterrupted listing of our ordinary shares on the Nasdaq Global Select Market. There can be no assurance, however, that it would be possible to enter into such a new agreement on substantially the same terms as the DTC Agreement or at all. A termination of the DTC Agreement could, therefore, have a material and adverse effect on us and the beneficial shareholders holding their ordinary shares within DTC. The DTC Agreement limits DTC’s liability for any loss suffered by us. DTC disclaims any liability for any loss attributable to circumstances beyond DTC’s control, including, but not limited to, errors committed by others. DTC is only liable for direct losses incurred as a result of events within DTC’s control. Thus, we may not be able to recover our entire loss if DTC does not perform its obligations under the DTC Agreement.

Our share price may be volatile, and the market price of our ordinary shares may drop below the price you pay.

Our share price has been and may continue to be volatile. Since our initial public offering in October 2018, the closing price of our ordinary shares as reported on the Nasdaq Global Select Market has ranged from a low of $2.34 on June 10, 2019 to a high of $9.20 on October 22, 2018. In addition, securities markets worldwide have experienced, and are likely to continue to experience, significant price and volume fluctuations. This market volatility, as well as general economic,

market or political conditions, could subject the market price of our shares to wide price fluctuations regardless of our operating performance. The trading price of our shares may fluctuate in response to various factors, including:

- market conditions in the broader stock market;
- actual or anticipated fluctuations in our quarterly financial and operating results;
- introduction of new products or services by us or our competitors;
- issuance of new or changed securities analysts' reports or recommendations;
- results of operations that vary from expectations of securities analysts and investors;
- results of operations that vary from those of our competitors;
- guidance, if any, that we provide to the public, any changes in this guidance or our failure to meet this guidance;
- strategic actions by us or our competitors;
- announcement by us, our competitors or our vendors of significant contracts or acquisitions;
- sales, or anticipated sales, of large blocks of our shares;
- additions or departures of key personnel;
- regulatory, legal or political developments;
- public response to press releases or other public announcements by us or third parties, including our filings with the SEC;
- litigation and governmental investigations;
- changing economic conditions;
- changes in accounting principles;
- default under agreements governing our indebtedness;
- exchange rate fluctuations; and
- other events or factors, including those from natural disasters, war, acts of terrorism or responses to these events.

These and other factors, many of which are beyond our control, may cause our market price and demand for our shares to fluctuate substantially. Fluctuations in our share price could limit or prevent investors from readily selling their shares and may otherwise negatively affect the market price and liquidity of our shares. In addition, in the past, when the market price of shares have been volatile, holders of those shares have sometimes instituted securities class action litigation against the company that issued the shares. For example, on April 30, 2019 we were was served with a complaint in an action entitled *Leo Shumacher, et al., v. Osmotica Pharmaceuticals plc, et al., Superior Court of New Jersey, Somerset County No. SOM-L-000540-19*, and on May 10, 2019, a complaint entitled *Jeffrey Tello, et al., v. Osmotica Pharmaceuticals plc, et al., Superior Court of New Jersey, Somerset County No. SOM-L-000617-19*

was filed in the same court as the Shumacher action. The complaints name us, certain of our directors and officers and the underwriters of our initial public offering as defendants in putative class actions alleging violations of Sections 11 and 15 of the Securities Act of 1933 related to the disclosures contained in the registration statement and prospectus used for our initial public offering of ordinary shares. On July 22, 2019, the plaintiffs filed an Amended Complaint consolidating the two actions, reiterating the previously pled allegations and adding an additional individual defendant. The parties participated in a mediation in December 2020 and agreed to settle the litigation. The parties are currently negotiating a settlement agreement which will need to be approved by the Court. We expect the settlement to be finalized and the litigation to be dismissed, the second quarter of 2021.

Since we have no current plans to pay regular cash dividends on our ordinary shares, you may not receive any return on investment unless you sell your ordinary shares for a price greater than that which you paid for it.

We do not anticipate paying any regular cash dividends on our ordinary shares for the foreseeable future. Any decision to declare and pay dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, our results of operations, financial condition, cash requirements, contractual restrictions and other factors that our board of directors may deem relevant. Our ability to pay dividends is, and may be, limited by covenants of existing and any future outstanding indebtedness we or our subsidiaries incur. In addition, our ability to pay cash dividends may be limited by Irish law, as discussed under the risk factor titled “The rights of our shareholders may differ from the rights typically offered to shareholders of a U.S. corporation and these differences may make our ordinary shares less attractive to investors.” Therefore, any return on investment in our ordinary shares is solely dependent upon the appreciation of the price of our ordinary shares on the open market, which may not occur.

Risks related to being an Irish corporation listing ordinary shares

Provisions contained in our Articles of Association, as well as provisions of Irish law, could impair a takeover attempt, limit attempts by our shareholders to replace or remove our current directors and management team, and limit the market price of our ordinary shares.

Our Articles of Association, together with certain provisions of the Irish Companies Act could have the effect of delaying or preventing changes in control or changes in our management without the consent of our board of directors.

There are a number of approaches for acquiring an Irish public limited company, including a court-approved scheme of arrangement under the Irish Companies Act, through a tender offer by a third party, by way of a merger with a company incorporated in the European Economic Area, or EEA, under the EU Cross-Border Mergers Directive (EU) 2017/1132 as implemented in Ireland by the European Communities (Cross-Border Mergers) Regulations 2008 (as amended) and by way of a merger with a company incorporated in Ireland under the Irish Companies Act. Each method requires shareholder approval or acceptance and different thresholds apply.

The Irish Takeover Panel Act 1997 and the Irish Takeover Rules 2013 made thereunder, or the Irish Takeover Rules, govern a takeover or attempted takeover of our company by means of a court-approved scheme of arrangement or a tender offer. The Irish Takeover Rules contain detailed provisions for takeovers, including as to disclosure, process, dealing and timetable. The Irish Takeover Rules could discourage an investor from acquiring 30% or more of our outstanding ordinary shares unless such investor was prepared to make a bid to acquire all outstanding ordinary shares.

Our Articles of Association contain provisions that may delay or prevent a change of control, discourage bids at a premium over the market price of our ordinary shares and adversely affect the market price of our ordinary shares and the voting and other rights of the holders of our ordinary shares. These provisions include:

- permitting our board of directors to issue preference shares without shareholder approval, with such rights, preferences and privileges as they may designate;

- provisions that allow our board of directors to adopt a shareholder rights plan upon such terms and conditions as it deems expedient and in our best interests;

- establishing an advance notice procedure for shareholder proposals to be brought before shareholder meetings, including proposed nominations of persons for election to our board of directors;
- the ability of our board of directors to fill vacancies on our board in certain circumstances; and
- imposing particular approval and other requirements in relation to certain business combinations.

These provisions do not make us immune from takeovers. However, these provisions may frustrate or prevent any attempts by our shareholders to replace or remove our current management team by making it more difficult for shareholders to replace members of our board of directors, which is responsible for appointing the members of our management.

Our board of directors may be limited by the Irish Takeover Rules in its ability to defend an unsolicited takeover attempt.

We are subject to the Irish Takeover Panel Act 1997 and the Irish Takeover Rules. Under the Irish Takeover Rules, our board of directors is not permitted to take any action that might frustrate an offer for our ordinary shares once our board of directors has received an approach that may lead to an offer or has reason to believe that such an offer is or may be imminent, subject to certain exceptions. Potentially frustrating actions, such as (i) the issue of shares, options, restricted share units or convertible securities, (ii) material acquisitions or disposals, (iii) entering into contracts other than in the ordinary course of business or (iv) any action, other than seeking alternative offers, which may result in frustration of an offer, are prohibited during the course of an offer or at any earlier time during which our board of directors has reason to believe an offer is or may be imminent. These provisions may give our board of directors less ability to control negotiations with hostile offerors than would be the case for a corporation incorporated in a jurisdiction of the United States.

The operation of the Irish Takeover Rules may affect the ability of certain parties to acquire our ordinary shares.

Under the Irish Takeover Rules, if an acquisition of ordinary shares were to increase the aggregate holding of the acquirer and its concert parties to ordinary shares that represent 30% or more of the voting rights of a company, the acquirer and, in certain circumstances, its concert parties would be required (except with the consent of the Irish Takeover Panel) to make an offer for the outstanding ordinary shares at a price not less than the highest price paid for the ordinary shares by the acquirer or its concert parties during the previous 12 months. This requirement would also be triggered by an acquisition of ordinary shares by a person holding (together with its concert parties) ordinary shares that represent between 30% and 50% of the voting rights in the company if the effect of such acquisition were to increase that person's percentage of the voting rights by 0.05% within a 12-month period. Under the Irish Takeover Rules, certain separate concert parties are presumed to be acting in concert. Our board of directors and their relevant family members, related trusts and "controlled companies" are presumed to be acting in concert with any corporate shareholder who holds 20% or more of the company. The application of these presumptions resulted may continue to result in restrictions upon the ability certain concert parties and members of our board of directors to acquire more of our securities, including under the terms of any executive incentive arrangements. We have consulted and may consult again in future with the Irish Takeover Panel with respect to the application of this presumption and the restrictions on the ability to acquire further securities, although we are unable to provide any assurance as to whether the Irish Takeover Panel will overrule this presumption in the future.

Our Articles of Association designate the courts of Ireland for all actions and proceedings, other than those relating to U.S. securities law, which could limit our shareholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees and require shareholders to pursue certain claims outside the United States.

Our Articles of Association provide that, unless our board of directors or one of its duly authorized committees approves the selection of an alternate forum and to the fullest extent permitted by applicable law, the courts of Ireland shall be the exclusive forum for all actions or proceedings, other than those related to U.S. securities law, but including (i) any derivative action or proceeding brought on behalf of us, (ii) any action asserting a claim of breach of a fiduciary duty

owed by any of our directors, officers or employees to us or our shareholders, (iii) any action asserting a claim against us arising pursuant to any provision of Irish law or our Articles of Association and (iv) any action to interpret, apply, enforce or determine the validity of our Articles of Association. Any person or entity purchasing or otherwise acquiring any interest in our shares shall be deemed to have notice of and to have consented to the provisions of our Articles of Association and waived any argument relating to the inconvenience of the forums described above. As a result, certain shareholder actions and proceedings may only be brought in Ireland and our shareholders would not have access to any U.S. courts with respect to such actions. This choice of forum provision may limit a shareholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and employees. Alternatively, if a court were to find these provisions of our Articles of Association inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business and financial condition.

Irish law differs from the laws in effect in the United States and U.S. shareholders may have difficulty enforcing civil liabilities against us, our directors or members of senior management.

A number of our directors are non-residents of the United States, and all or a substantial portion of their assets are located outside the United States. As a result, it may not be possible to serve process on these directors, or us, in the United States or to enforce court judgments obtained in the United States against these individuals or us in Ireland based on the civil liability provisions of the U.S. federal or state securities laws. In addition, there is some uncertainty as to whether the courts of Ireland would recognize or enforce judgments of U.S. courts obtained against us or our directors based on the civil liabilities provisions of the U.S. federal or state securities laws or hear actions against us or those persons based on those laws. The United States currently does not have a treaty with Ireland providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any U.S. federal or state court based on civil liability, whether or not based solely on U.S. federal or state securities laws, would not automatically be enforceable in Ireland. A judgment obtained against us will be enforced by the courts of Ireland if the following general requirements are met:

- U.S. courts must have had jurisdiction in relation to the particular defendant according to Irish conflict of law rules (the submission to jurisdiction by the defendant would satisfy this rule); and
- the judgment must be final and conclusive and the decree must be final and unalterable in the court which pronounces it.

  A judgment can be final and conclusive even if it is subject to appeal or even if an appeal is pending. But where the effect of lodging an appeal under the applicable law is to stay execution of the judgment, it is possible that in the meantime the judgment may not be actionable in Ireland. It remains to be determined whether a final judgment given in default of appearance is final and conclusive. Irish courts may also refuse to enforce a judgment of the U.S. courts that meets the above requirements for one of the following reasons:

- the judgment is not for a definite sum of money;
- the judgment was obtained by fraud;
- the enforcement of the judgment in Ireland would be contrary to natural or constitutional justice;
- the judgment is contrary to Irish public policy or involves certain U.S. laws that will not be enforced in Ireland; or
- jurisdiction cannot be obtained by the Irish courts over the judgment debtors in the enforcement proceedings by personal service in Ireland or outside Ireland under Order 11 of the Irish Superior Courts Rules.

As an Irish company, we are principally governed by Irish law, which differs in some material respects from laws generally applicable to U.S. corporations and shareholders, including, among others, differences relating to interested director and officer transactions and shareholder lawsuits. Likewise, the duties of directors and officers of an Irish company generally are owed to the company only. Shareholders of Irish companies generally do not have a personal right of action against directors or other officers of the company and may exercise such rights of action on behalf of the company only in limited circumstances. Accordingly, holders of our ordinary shares may have more difficulty protecting their interests than would holders of shares of a corporation incorporated in a jurisdiction of the United States.

The rights of our shareholders may differ from the rights typically offered to shareholders of a U.S. corporation and these differences may make our ordinary shares less attractive to investors.

We are incorporated under Irish law and, therefore, certain of the rights of holders of our shares are governed by Irish law, including the provisions of the Irish Companies Act, and by our Articles of Association. These rights differ in certain respects from the rights of shareholders in typical U.S. corporations and these differences may make our ordinary shares less attractive to investors. The principal differences include the following:

- under Irish law, dividends may only be declared if we have, on an individual entity basis, profits available for distribution, within the meaning of the Irish Companies Act. In addition, no distribution or dividend may be paid or made by us unless our net assets are equal to, or exceed, the aggregate of our called up share capital plus non-distributable reserves and the distribution does not reduce our net assets below such aggregate;

- under Irish law, each shareholder generally has preemptive rights to subscribe on a proportionate basis to any issuance of shares. Preemption rights may be disapplied under Irish law for renewable five-year periods by Irish companies by way of a provision in such companies' articles of association or a special resolution of their shareholders. We have opted out of these preemption rights in our Articles of Association as permitted under Irish law for the maximum period permitted of five years from the date of adoption of the Articles of Association;

- under Irish law, certain matters require the approval of holders of 75% of the votes cast at a general meeting of our shareholders, including amendments to our Articles of Association, which may limit our flexibility to manage our capital structure;

- under Irish law, a bidder seeking to acquire us would need, on a tender offer, to receive shareholder acceptance in respect of 80% of our outstanding shares. If this 80% threshold is not achieved in the offer, under Irish law, the bidder cannot complete a "second step merger" to obtain 100% control of us. Accordingly, tender of 80% of our outstanding shares will likely be a condition in a tender offer to acquire us, not 50% as is more common in tender offers for corporations organized under U.S. law; and

- under Irish law, shareholders may be required to disclose information regarding their equity interests upon our request, and the failure to provide the required information could result in the loss or restriction of rights attaching to the shares, including prohibitions on the transfer of the shares, as well as restrictions on voting, dividends and other payments.

Risks related to taxation

Changes in our effective tax rate may reduce our net income in future periods.

We cannot give any assurance as to what our effective tax rate will be because of, among other things, uncertainty regarding the tax policies of the jurisdictions in which we operate and the varying applications of statutes, regulations and related interpretations.

A number of factors may increase our future effective tax rates, including: the jurisdictions in which profits are determined to be earned and taxed (which may vary depending on our taxable presence in such jurisdictions as may be

determined by tax authorities in such jurisdictions); the resolution of issues arising from tax audits that may be undertaken by various tax authorities; changes in the valuation of our deferred tax assets and liabilities due to changes in applicable tax legislation; increases in expenses that are not deductible for tax purposes, including transaction costs and impairments of goodwill in connection with acquisitions; changes in available tax credits; changes in share-based compensation; changes in tax laws or the interpretation of such tax laws changes to currently applicable tax treaties, including those resulting in a loss of treaty benefits; changes in GAAP; and challenges to the transfer pricing policies related to our structure undertaken by various tax authorities. Currently, jurisdictions within the Organization for Economic Co-Operation and Development, or the OECD, are reviewing OECD proposals relating to base erosion and profit shifting. Our effective tax rate could be adversely affected to the extent that countries adopt such OECD proposals.

U.S. tax legislation enacted in 2017 has significantly changed the U.S. federal income taxation of corporations and multinational consolidated groups, including by reducing the U.S. corporate income tax rate, limiting interest deduction, adopting elements of a territorial international tax system and introducing new anti-base erosion provisions. This legislation is unclear in many respects and could be subject to potential amendments and technical corrections and subject to differing interpretations and implementing regulations by the U.S. Department of Treasury and the Internal Revenue Service, any of which could lessen or increase certain adverse impacts of the legislation or affect our actual effective tax rate.

It is possible that in the future, whether as a result of a change in law or the practice of any relevant tax authority or as a result of any change in the conduct of our affairs, we could become, or be regarded as having become tax resident in a jurisdiction other than Ireland. Should we cease to be an Irish tax resident, we may be subject to a charge of Irish capital gains tax as a result of a deemed disposal of our assets. Our actual effective tax rate may vary from our expectation and that variance may be material. Additionally, the tax laws of Ireland and other jurisdictions in which we operate could change in the future, and such changes could cause a material adverse change in our effective tax rate.

If our tax rates or tax expenses were to increase as described above, such increases could cause a material and adverse change in our worldwide effective tax rate and we may have to take action, at potentially significant expense, to seek to mitigate the effect of such changes. In addition, any amendments to the current double taxation treaties between Ireland and other jurisdictions could subject us to increased taxation. Any such amendments to double taxation treaties or increases in taxation based on examinations by taxing authorities, if such increases are ultimately sustained, could result in increased charges, financial loss, including penalties, and reputational damage and materially and adversely affect our results, financial condition and prospects.

If we are a passive foreign investment company, U.S. investors in our ordinary shares could be subject to adverse U.S. federal income tax consequences.

The rules governing passive foreign investment companies, or PFICs, can have adverse effects for U.S. federal income tax purposes. We would be classified as a PFIC for any taxable year in which either: (i) at least 75% of our gross income is classified as ‘‘passive income’’ for purposes of the PFIC rules, or (ii) at least 50% of the fair market value of our assets (determined on the basis of a quarterly average) is attributable to assets that produce or are held for the production of ‘‘passive income.’’ For this purpose, we will be treated as owning our proportionate share of the assets and earning our proportionate share of the income of any other corporation we own, directly or indirectly, 25% or more (by value) of its stock.

We do not believe that we were a PFIC for the 2020 taxable year, and we do not anticipate becoming a PFIC for the 2021 taxable year; however, such a determination cannot be made until following the end of such taxable year.

The determination of whether we are a PFIC must be made annually after the close of each taxable year, depends on the particular facts and circumstances (such as the valuation of our assets, including goodwill and other intangible assets) and may also be affected by the interpretation and application of the PFIC rules. The fair market value of our assets is expected to depend, in part, upon (a) the market price of our ordinary shares and (b) the composition of our income and assets, which will be affected by how, and how quickly, we spend any cash that is raised in any financing transaction. In light of the foregoing, no assurance can be provided that we are not a PFIC for the current taxable year or that we will not become a PFIC for any future taxable year.

If we are a PFIC, U.S. holders of our ordinary shares would be subject to adverse U.S. federal income tax consequences, such as ineligibility for any preferred tax rates on capital gains or on actual or deemed dividends, interest charges on certain taxes treated as deferred, and additional reporting requirements under U.S. federal income tax laws and regulations. If we are classified as a PFIC in any taxable year with respect to which a U.S. holder owns ordinary shares, we generally will continue to be treated as a PFIC with respect to such U.S. holder in all succeeding taxable years, regardless of whether we continue to meet the tests described above, unless the U.S. holder makes a ‘‘deemed sale election.’’ Furthermore, whether or not U.S. holders of our ordinary shares make timely qualified electing fund, or QEF, elections, if we provide the necessary information to U.S. holders to make such elections, or mark-to-market elections may affect the U.S. federal income tax consequences to U.S. holders with respect to the acquisition, ownership and disposition of our ordinary shares and any distributions such U.S. holders may receive. Investors should consult their own tax advisors regarding all aspects of the application of the PFIC rules to our ordinary shares.

U.S. holders of 10% or more of the voting power or value of our ordinary shares may be subject to U.S. federal income taxation at ordinary income tax rates on undistributed earnings and profits.

There is a risk that we will be classified as a ‘‘controlled foreign corporation,’’ or CFC, for U.S. federal income tax purposes. We will generally be classified as a CFC if more than 50% of our outstanding shares, measured by reference to voting power or value, are owned (directly, indirectly or by attribution) by ‘‘U.S. Shareholders.’’ For this purpose, a ‘‘U.S. Shareholder’’ is any U.S. person that owns directly, indirectly or by attribution, 10% or more of the total voting power or total value of our outstanding shares. If we are classified as a CFC, a U.S. Shareholder may be subject to U.S. income taxation at ordinary income tax rates on its proportionate share of our undistributed earnings and profits attributable to ‘‘subpart F income’’ or undistributed earnings and profits invested in certain U.S. property and may also be subject to tax at ordinary income tax rates on any gain realized on a sale of ordinary shares, to the extent of our current and accumulated earnings and profits attributable to such shares. A U.S. Shareholder of a CFC is also required to include in gross income for a taxable year, at a reduced effective tax rate, its proportionate share of certain non-U.S. active business income of a CFC not included in a CFC’s ‘‘subpart F income,’’ or ‘‘global intangible low-taxed income,’’ to the extent such CFC’s ‘‘tested income’’ is in excess of 10% of the adjusted U.S. federal income tax basis of depreciable tangible assets used in the CFC’s trade or business (reduced by a U.S. Shareholder’s allocable net interest expense) and is not otherwise offset by any ‘‘tested loss’’ attributable to other CFCs owned by such U.S. Shareholder. Foreign taxes paid by a CFC attributable to the CFC’s ‘‘subpart F income’’ and ‘‘global intangible low-taxed income’’ and any corresponding foreign tax credits may affect the amount of income includible in a U.S. Shareholder’s gross income for U.S. tax purposes. Even if we are not classified as a CFC, certain of our non-U.S. subsidiaries could be treated as CFCs due to the application of certain attribution rules that currently apply in determining CFC status. If certain non-U.S. subsidiaries are classified as CFCs, any U.S. Shareholder may be required to report annually and include in its U.S. taxable income its pro rata share of ‘‘subpart F income,’’ ‘‘global intangible low-taxed income’’ and investments in U.S. property attributable to those non-U.S. subsidiaries. The CFC rules are complex and U.S. Shareholders and U.S. holders of our ordinary shares are urged to consult their own tax advisors regarding the possible application of the CFC, ‘‘subpart F income,’’ and ‘‘global intangible low-taxed income’’ rules (including applicable direct and indirect attribution rules) to them based on their particular circumstances.

A future transfer of your ordinary shares, other than one effected by means of the transfer of book entry interests in DTC, may be subject to Irish stamp duty.

Transfers of ordinary shares effected by means of the transfer of book entry interests in the DTC should not be subject to Irish stamp duty where ordinary shares are traded through DTC, either directly or through brokers that hold such shares on behalf of customers through DTC. However, if you hold your ordinary shares as of record rather than beneficially through DTC, any transfer of your ordinary shares could be subject to Irish stamp duty (currently at the rate of 1% of the higher of the price paid or the market value of the shares acquired). Payment of Irish stamp duty is generally a legal obligation of the transferee. The potential for stamp duty to arise could adversely affect the price of our ordinary shares.

General risk factors

We are, and will continue to be in the future, a party to legal proceedings that could result in adverse outcomes.

We may be a party to legal proceedings, including matters involving securities liability, personnel and employment issues, intellectual property claims and other proceedings arising in the ordinary course of business. In addition, there are an increasing number of investigations and proceedings in the health care industry generally that seek recovery under the statutes and regulations identified in the section entitled "Business — Government Regulation and Approval Process." We evaluate our exposure to these legal proceedings and establish reserves for the estimated liabilities in accordance with generally accepted accounting principles, or GAAP. Assessing and predicting the outcome of these matters involves substantial uncertainties. Unexpected outcomes in these legal proceedings, or changes in our evaluation or predictions and accompanying changes in established reserves, could have a material adverse impact on our financial results. For more information on our material pending litigation, see the risk factor under the caption "—Our competitors or other third parties may allege that we, our suppliers or partners are infringing their intellectual property, forcing us to expend substantial resources in litigation, the outcome of which is uncertain. Any unfavorable outcome of such litigation, including losses related to "at-risk" product launches, could have a material adverse effect on our business, financial position and results of operations" and the section entitled "Legal Proceedings" herein.

We are increasingly dependent on information technology, and our systems and infrastructure face certain risks, including cybersecurity and data leakage risks.

Significant disruptions to our information technology systems or breaches of information security could adversely affect our business. In the ordinary course of business, we collect, store and transmit large amounts of confidential information, and it is critical that we do so in a secure manner to maintain the confidentiality and integrity of such confidential information. The size and complexity of our information technology systems, and those of our third-party vendors with whom we contract, make such systems potentially vulnerable to service interruptions and security breaches from inadvertent or intentional actions by our employees, partners or vendors, from attacks by malicious third parties. Such attacks are of ever-increasing levels of sophistication and are made by groups and individuals with a wide range of motives (including, but not limited to, industrial espionage) and expertise, including organized criminal groups, "hacktivists," nation states and others. As a global pharmaceutical company, our systems are subject to frequent attacks. Due to the nature of some of these attacks, there is a risk that they may remain undetected for a period of time. Service interruptions could also result from intentional or accidental physical damage to our systems infrastructure maintained by us or by third parties. Maintaining the secrecy of this confidential, proprietary, or trade secret information is important to our competitive business position. While we have taken steps to protect such information and invested in information technology, there can be no assurance that our efforts will prevent service interruptions or security breaches in our systems or the unauthorized or inadvertent wrongful use or disclosure of confidential information that could adversely affect our business operations or result in the loss, dissemination, or misuse of critical or sensitive information. A breach of our security measures or the accidental loss, inadvertent disclosure, unapproved dissemination, misappropriation or misuse of trade secrets, proprietary information, or other confidential information, whether as a result of theft, hacking, fraud, trickery or other forms of deception, or for any other reason, could enable others to produce competing products, use our proprietary technology or information, or adversely affect our business or financial condition. Further, any such interruption, security breach, loss or disclosure of confidential information, could result in financial, legal, business, and reputational harm to us and could have a material adverse effect on our business, financial position, results of operations or cash flow.

Material weaknesses in our internal control over financial reporting have occurred in the past and could occur in the future.

We are required to comply with the SEC's rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act, which require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of internal control over financial reporting.

Maintaining effective internal control over financial reporting is necessary for us to produce reliable financial reports and is important to help prevent financial fraud. We have in the past and may in the future identify material weaknesses

in our internal control over financial reporting. If we are unable to maintain adequate internal controls, our business and operating results could be harmed, we could be subjected to regulatory scrutiny, civil or criminal penalties or shareholder litigation, the defense of any of which could cause the diversion of management's attention and resources, we could incur significant legal and other expenses, and we could be required to pay damages as a result of such actions if any such actions were not resolved in our favor. Moreover, we may be the subject of negative publicity focusing on a material weakness and we may be subject to negative reactions from shareholders and others with whom we do business. Further, we may not be able to remediate a future material weakness in a timely manner and our management may be required to devote significant time and expense to remediate any such material weakness. Failure to maintain adequate internal control over financial reporting could also result in financial statements that do not accurately reflect our financial condition or results of operations, which could result in the need to restate previously issued financial statements. There can be no assurance that we will not identify any significant deficiencies or other material weaknesses in the future that will impair our ability to report our financial condition and results of operations accurately or on a timely basis. In addition, if we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an unqualified opinion as to the effectiveness of our internal control over financial reporting in future periods, investors may lose confidence in the accuracy and completeness of our financial reports.

We have in the past identified errors in our financial statements, which required us to restate those financial statements. If we identify errors in our financial reporting in the future, we may be required to restate previously issued financial statements and any such restatement may subject us to regulatory penalties and could cause investors to lose confidence in the accuracy and completeness of our financial statements.

In connection with the preparation of the prospectus for our initial public offering, we identified errors in our financial statements for the years ended December 31, 2016 and December 31, 2017 related to our accounting for certain aspects of the Business Combination. The required adjustments to address these errors led to restatements of those financial statements. In addition, we had to correct certain misstatements in our annual and interim financial statements for 2018 and 2019 related to misstatements associated with the tax treatment of certain intercompany transactions at the time of the Business Combination. Additionally, as previously reported in our Quarterly Report on Form 10-Q for the period ended September 30, 2019, revisions were necessary to correct misstatements related to uncertain tax positions and prepaid taxes and certain other previously identified immaterial misstatements. If we are required to restate any of our financial statements in the future due to our inability to adequately remedy the issues that gave rise to these restatements or for any other reason, we may be subject to regulatory penalties and investors could lose confidence in the accuracy and completeness of our financial statements, which could cause our share price to decline.

Our operating results are affected by many factors and may fluctuate significantly on a quarterly basis.

Our operating results may vary substantially from quarter to quarter and may be greater or less than those achieved in the immediately preceding period or in the comparable period of the prior year. Factors that may cause quarterly results to vary include, but are not limited to, the following:

- our ability to create demand in the marketplace for products we promote;
- the number of new product introductions;
- losses related to inventory write-offs;
- marketing exclusivity, if any, which may be obtained on certain new products;
- the level of competition in the marketplace for certain products;
- price decreases and associated customer shelf stock adjustments;
- availability of raw materials and finished products from suppliers;

- our ability to manufacture products at our manufacturing facilities;
- the scope and outcome of governmental regulatory actions;
- our dependence on a small number of products for a significant portion of total revenues or income; and
- legal actions asserting intellectual property rights against our products brought by competitors and legal challenges to our intellectual property rights brought against us by our competitors; price erosion and customer consolidation; and significant payments (such as milestones) payable by us under licensing and development agreements to our partners before the related product has received FDA approval.

The profitability of our product sales is also dependent upon the prices we are able to charge for our products, the costs to purchase products from third parties and our ability to manufacture our products in a cost-effective manner. If our total revenues decline or do not grow as anticipated, we may not be able to reduce our operating expenses to offset such declines. Failure to achieve anticipated levels of total revenues could, therefore, significantly harm our business and operating results.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our principal office is located in Bridgewater, New Jersey, where we lease approximately 18,000 square feet of office space pursuant to a lease that expires in March 2022. We also own a facility in Marietta, Georgia and lease facilities in Sayreville, New Jersey, Tampa, Florida, Wilmington, North Carolina, and Buenos Aires, Argentina. We believe our facilities are adequate to meet our current needs, although we may seek to negotiate new leases or evaluate additional or alternate space for our operations. We believe appropriate alternative space would be readily available on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

From time to time, we are a party to various legal proceedings. In addition, we have in the past been, and may in the future be, subject to investigations by governmental and regulatory authorities, which exposes us to greater risks associated with litigation, regulatory or other proceedings, including significant fines or penalties. The outcome of litigation, regulatory or other proceedings cannot be predicted with certainty, and some lawsuits, claims, actions or proceedings may be disposed of unfavorably to us. In addition, intellectual property disputes often have a risk of injunctive relief which, if imposed against us, could materially and adversely affect our business, financial condition or results of operations.

On February 16, 2018, we received FDA approval for our amantadine extended release tablet product under the trade name Osmolex ER. On that same date we filed in the Federal District Court for the District of Delaware a Complaint for Declaratory Judgment of Noninfringement of certain patents owned by Adamas Pharmaceuticals, Inc. (Osmotica Pharmaceutical US LLC and Vertical Pharmaceuticals, LLC vs. Adamas Pharmaceuticals, Inc. and Adamas Pharma, LLC). Adamas was served with the complaint on February 21, 2018. Adamas filed an answer on April 13, 2018 denying the allegations in the complaint and reserving the ability to raise counterclaims as the litigation progresses. On September 20, 2018, Adamas filed an amended answer to our Complaint for Declaratory Judgment of Noninfringement, with counterclaims alleging infringement of certain patents included in our complaint and requesting that the court grant Adamas damages, injunctive relief and attorneys' fees. On December 2, 2020, we entered into an agreement to settle the litigation with Adamas. Under the terms of the agreement, both parties agreed to drop their respective claims relating to the patent litigation, and Adamas agreed to acquire the global rights to Osmolex ER from us for $7.5 million. The sale of the global rights to Osmolex ER closed in January 2021. Additionally, in connection with the settlement and the sale of the global rights to Osmolex ER, the parties entered into a supply agreement pursuant to which we agreed to supply

Adamas with amantadine extended release tablets for a six-year term, subject to possible two-year extensions and customary closing conditions.

On April 30, 2019, Osmotica Pharmaceuticals plc was served with a complaint in an action entitled *Leo Shumacher, et al., v. Osmotica Pharmaceuticals plc, et al., Superior Court of New Jersey, Somerset County No. SOM-L-000540-19*. On May 10, 2019, a Complaint entitled *Jeffrey Tello, et al., v. Osmotica Pharmaceuticals plc, et al., Superior Court of New Jersey, Somerset County No. SOM-L-000617-19* was filed in the same court as the Shumacher action. The complaints named us, certain of our directors and officers and the underwriters of our initial public offering as defendants in putative class actions alleging violations of Sections 11 and 15 of the Securities Act of 1933 related to the disclosures contained in the registration statement and prospectus used for our initial public offering of ordinary shares. On July 22, 2019, the plaintiffs filed an amended complaint consolidating the two actions, reiterating the previously pled allegations and adding an additional individual defendant. The parties participated in a mediation and reached an agreement in principle to settle the litigation on December 15, 2020. The agreement in principle calls for a payment by the Company of $5.25 million (a portion of which we expect would be covered by applicable insurance) and would fully resolve all claims asserted in the litigation against all defendants named in the litigation, including the Company. No party would admit any wrongdoing as part of the proposed settlement, which was reached to avoid the further cost and distraction of litigation. The agreement in principle contemplates the negotiation and execution of a final settlement agreement. The settlement is also subject to preliminary approval by the Superior Court of New Jersey, notice to the putative class, and subsequent final approval by the Superior Court of New Jersey

In general, we intend to continue to vigorously prosecute and defend any proceedings, as appropriate; however, from time to time, we may settle or otherwise resolve these matters on terms and conditions that we believe are in our best interests. Resolution of any or all claims, investigations and legal proceedings, individually or in the aggregate, could have a material adverse effect on our business, results of operations and cash flows in any given accounting period or on our overall financial condition.

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

Market Information and Holders

Our ordinary shares began trading October 18, 2018. Our ordinary shares are listed on the Nasdaq Global Select Market under the symbol "OSMT."

As of March 10, 2021, there were four registered holders of record of our ordinary shares.

Securities Authorized for Issuance under Equity Compensation Plans

The information required by this item will be incorporated by reference from our definitive proxy statement to be filed pursuant to Regulation 14A.

Dividend Policy

We have never declared nor paid cash dividends on our ordinary shares. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. We do not intend to pay cash dividends in respect of our ordinary in the foreseeable future. Any future determination to pay cash dividends will be made at the discretion of our board of directors and will depend on restrictions and other factors our board of directors may deem relevant. Investors should not purchase our common stock with the expectation of receiving cash dividends.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The following table contains information regarding purchases of our ordinary shares made during the year ended December 31, 2020 by or on behalf of Osmotica Pharmaceuticals plc or any "affiliated purchaser," as defined by Rule 10b-18(a)(3) of the Securities Exchange Act of 1934:

	Issuer Purchases of Equity Securities			
Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Maximum number of shares that may yet be purchased under the plans or programs(1)
10/1/20 - 10/31/20	440,000	5.85	440,000	3,302,985
11/1/20 - 11/30/20	160,000	5.66	160,000	3,142,985
12/1/20 - 12/31/20	-	-	-	3,142,985
Total	600,000	$ 5.44	600,000	

(1) On September 3, 2019, our board of directors authorized the repurchase of up to 5,251,892 ordinary shares pursuant to a share repurchase program. Purchases under the ordinary share repurchase program can be made on the open market or in privately negotiated transactions, with the size and timing of these purchases based on a number of factors, including the price of our ordinary shares, our business and market conditions. We retired ordinary shares acquired under the repurchase program. The repurchase program expired November 28, 2020.

ITEM 6. SELECTED FINANCIAL DATA

Not applicable.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The statements in the discussion and analysis regarding industry outlook, our expectations regarding the performance of our business and the forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, the risks and uncertainties described in "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements." Our actual results may differ materially from those contained in or implied by any forward-looking statements. You should read the following discussion together with the sections entitled "Risk Factors," "Business" and the audited consolidated financial statements, including the related notes, appearing elsewhere in this Annual Report on Form 10-K. All references to years, unless otherwise noted, refer to our fiscal years, which end on December 31. As used in this Annual Report on Form 10-K, unless the context suggests otherwise, "we," "us," "our," "the Company" or "Osmotica" refer to Osmotica Pharmaceuticals plc. This discussion and analysis is based upon the historical financial statements of Osmotica Pharmaceuticals plc included in this Annual Report on Form 10-K. Prior to the Reorganization (as defined in the accompanying Notes to Consolidated Financial Statements), Osmotica Pharmaceuticals plc was a subsidiary of Osmotica Holdings S.C.Sp. and had no material assets and conducted no operations other than activities incidental to its formation, the Reorganization and its initial public offering.

We are a fully integrated biopharmaceutical company focused on the development and commercialization of specialty products that target markets with underserved patient populations. In 2020, we continued to transition our business to a specialty pharmaceutical company focused on proprietary products primarily in the eye care and neuroscience areas.

We generated total revenues in 2020 across our existing portfolio of promoted women's health products, specialty neurology, as well as our non-promoted products, which are primarily complex formulations of generic drugs. In 2018, we received regulatory approval from the FDA for Osmolex ER (amantadine extended-release tablets) for the treatment of Parkinson's disease and drug-induced extrapyramidal reactions, which are involuntary muscle movements caused by certain medications, in adults. We completed the launch of Osmolex ER in January 2019. In January 2021, we concluded the sale of Osmolex ER. In July 2020, we received regulatory approval from the FDA for RVL-1201, or Upneeq, (oxymetazoline hydrocholoride ophthalmic solution, 0.1%), for the treatment of acquired blepharoptosis, or droopy eyelid, in adults. We launched Upneeq in September 2020 to a limited number of eyecare professionals.

Our core competencies span drug development, manufacturing and commercialization. Our sales representatives are fully engaged in the launch and in-person promotion of Upneeq, while we continue to maintain non-personal promotional efforts for certain other products in our portfolio, including M-72 in specialty neurology; OB Complete, our family of prescription prenatal dietary supplements, and Divigel (estradiol gel, 0.1%) in women's health. As of December 31, 2020, our commercial portfolio of promoted and non-promoted products consists of approximately 35 products. Certain of our key products, particularly those that incorporate our proprietary Osmodex drug delivery system, are manufactured in our Marietta, Georgia facility. Some of our products benefit from intellectual property protection, formulation and manufacturing complexities, data exclusivity, as well as U.S. Drug Enforcement Administration, or DEA, regulation and quotas for API.

Many of our generic products compete in generic markets where barriers to entry are lower than markets in which certain of our promoted products compete. Generic products generally contribute most significantly to revenues and gross margins at the time of launch or in periods where no other or a limited number of competing products have been approved and launched. In the U.S., the consolidation of buyers in recent years has increased competitive pressures on the industry as a whole. As such, the timing of new product launches can have a significant impact on a company's financial results. The entrance into the market of additional competition can have a negative impact on the pricing and volume of the affected products which are outside the company's control. In particular, methylphenidate ER tablets, venlafaxine ER tablets, or VERT, and Lorzone have experienced, and are expected to continue to experience, significant pricing and market erosion due to additional competition from other generic pharmaceutical companies. This generic pricing erosion has resulted in lower net sales, revenue and profitability from methylphenidate ER tablets, VERT and Lorzone in 2020, and this erosion is expected to continue in subsequent years.

On July 8, 2020, the FDA approved our NDA for Upneeq for the treatment of acquired blepharoptosis in adults. Upneeq was approved based on three Phase III clinical studies that supported Upneeq's efficacy and safety. Results from

Upneeq's first Phase III clinical trial showed that the formulation met its primary efficacy endpoint and was well-tolerated.

We believe Upneeq is the first non-surgical treatment option approved by the FDA for acquired blepharoptosis. We currently make Upneeq available exclusively through RVL Pharmacy, Inc. our wholly-owned pharmacy.

We acquired Upneeq as part of our asset acquisition of RevitaLid, Inc., now known as RVL Pharmaceuticals, Inc., in 2017. As part of the acquisition, we agreed to make future earn-out, milestone and royalty payments based on net sales and regulatory developments with respect to Upneeq.

Upneeq is manufactured and supplied to us by Nephron Pharmaceuticals Corporation under an exclusive supply agreement that has a term of five years from the production of the initial commercial batches, and automatically renews for additional one-year periods unless either party provides at least 90 days' advance written notice of non-renewal.

On July 28, 2020, we entered into a license agreement with Santen Pharmaceutical Co. Ltd, or Santen, granting Santen the exclusive development, registration, and commercialization rights to RVL-1201 in Japan, China, and other Asian countries as well as EMEA countries. Under the license agreement with Santen, we received an upfront license milestone payment of $25.0 million and may receive additional milestone payments up to $64.0 million based on regulatory and sales achievements in Santen's territories. We are also entitled to royalty payments on net sales of RVL-1201 in Santen commercialization territories.

In addition, we are developing our late-stage product candidate arbaclofen extended-release, or ER, tablets designed for the alleviation of signs and symptoms of spasticity resulting from multiple sclerosis, or MS, for which we have completed Phase III clinical trials. In June 2020, we resubmitted our NDA for arbaclofen ER tablets for the alleviation of spasticity in MS to the FDA. On July 17, 2020 we received notice from the FDA that it considered the resubmission a complete response to the July 9, 2016 action letter and set a goal date for a FDA decision on the NDA of December 29, 2020. On December 28, 2020 we received a complete response letter, or CRL indicating the FDA could not approve the NDA in its then current form. The CRL stated that we did not provide adequate justification (including in our most recent NDA amendment) for the statistical analysis of the change from baseline to Day 84 in TNmAS-MAL scores comparing arbaclofen 40 mg to placebo, one of the co-primary endpoints. On January 23, 2021, we submitted a Type A meeting request to the FDA to discuss the CRL's recommendations and obtain advice on a path forward for the NDA. The meeting took place on March 4, 2021, during which we explored selective review of the currently available data and options for a path forward for FDA approval, including conducting another clinical study.

On November 10, 2020, we and our board of directors announced that it is undertaking a comprehensive review of strategic options to maximize shareholder value. The options under consideration include divestitures of non-strategic assets, re-financings, commercialization or collaboration agreements.

Business Update Regarding COVID-19

The current COVID-19 pandemic has presented a substantial public health and economic challenge around the world and is affecting our employees, patients, communities and business operations, as well as the U.S. economy and financial markets. The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition will depend on future developments that are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning COVID-19, the actions taken to contain it or treat its impact and the economic impact on local, regional, national and international markets.

To date, we have been able to continue to supply our products to our patients without significant disruptions. We do not currently anticipate significant interruptions in supply in the near term. However, we are continuing to monitor the potential impact of the COVID-19 pandemic on our business and operations, including our sales, expenses, manufacturing and clinical trials.

We and our third-party contract manufacturing partners have been able to operate our manufacturing facilities at or near normal levels. While we currently do not anticipate significant interruptions in our manufacturing supply chain, the

COVID-19 pandemic and related mitigation efforts may have a negative impact in the future on our third party suppliers' and contract manufacturing partners' ability to manufacture our products or to have our products reach all markets.

We are monitoring the demand for our products, including the duration and degree to which we may see declines in customer orders or new prescriptions for our products, as health care providers are dedicating more resources for the treatment of COVID-19 patients. During the first quarter of 2020, we took action to reduce the size of our field sales force with the remaining sales personnel, in many cases, engaging with physicians remotely as we seek to continue to support healthcare professionals and patient care.

In the U.S. and in most other key markets, our office-based employees have been encouraged to work from home since mid-March 2020. During this time, we are ensuring essential staffing levels in our operations remain in place, including maintaining key personnel in our laboratories and manufacturing facilities.

For additional information on the various risks posed by the COVID-19 pandemic, please read Item 1A. Risk Factors included in this Annual Report on Form 10-K.

Financial Operations Overview

Segment Information

We currently operate in one business segment focused on the development and commercialization of pharmaceutical products that target markets with underserved patient populations. We are not organized by market and are managed and operated as one business. We also do not operate any separate lines of business or separate business entities with respect to our products. A single management team reports to our chief operating decision maker who comprehensively manages our entire business. Accordingly, we do not accumulate discrete financial information with respect to separate product lines and do not have separately reportable segments. See Note 2, *Summary of Significant Accounting Policies* to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Components of Results of Operations

Revenues

Our revenues consist of product sales, royalty revenues and licensing and contract revenue.

Net product sales—Our revenues consist primarily of product sales of our promoted products, principally Divigel and the OB Complete family of prescription prenatal dietary supplements, M-72, Lorzone, and our non-promoted products. We ship our products to our customers pursuant to purchase orders, which in certain cases are pursuant to a master agreement with that customer, and we invoice the customer upon shipment. For these sales we recognize revenue when control has transferred to the customer, which is typically on delivery to the customer. The amount of revenue we recognize is equal to the selling price, adjusted for any variable consideration, which includes estimated chargebacks, commercial rebates, discounts and allowances at the time revenues are recognized.

Royalty revenue—For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, we recognize revenue at the later of (a) when the related sales occur, or (b) when the performance obligation to which some or all the royalty has been allocated has been satisfied (or partially satisfied).

Licensing and contract revenue—We have arrangements with commercial partners that allow for the purchase of product from the Company by the commercial partners for purpose of sub-distribution. Licensing revenue is recognized when the performance obligation identified in the arrangement is completed. Variable considerations, such as returns on product sales, government program rebates, price adjustments and prompt pay discounts associated with licensing revenue, are generally the responsibility of our commercial partners.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist primarily of personnel expenses, including salaries and benefits for employees in executive, sales, marketing, finance, accounting, business development, legal and human resource functions. General and administrative expenses also include corporate facility costs, including rent, utilities, insurance, legal fees related to corporate matters and fees for accounting and other consulting services. We expect to continue to incur additional general and administrative expenses as a public company, including costs associated with the preparation of our SEC filings, increased legal and accounting costs, investor relations costs, incremental director and officer liability insurance costs, as well as costs related to compliance with the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Research and Development

Costs for research and development are charged as incurred and include employee-related expenses (including salaries and benefits, travel and expenses incurred under agreements with contract research organizations, or CROs, contract manufacturing organizations and service providers that assist in conducting clinical and preclinical studies), costs associated with preclinical activities and development activities and costs associated with regulatory operations.

Costs for certain development activities, such as clinical studies, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations or information provided to us by our vendors on their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the patterns of costs incurred, and are reflected in our consolidated financial statements as prepaid expenses or accrued expenses as applicable.

Results of Operations

Comparison of Years Ended December 31, 2020 and 2019

Financial Operations Overview

The following table presents revenues and expenses for the years ended December 31, 2020 and 2019 (dollars in thousands):

	Year Ended December 31,		
	2020	2019	% Change
Net product sales	$ 145,850	$ 235,472	(38)%
Royalty revenue	4,107	3,641	13 %
Licensing and contract revenue	27,927	918	2,942 %
Total revenues	177,884	240,031	(26)%
Cost of goods sold (inclusive of amortization of intangibles)	74,480	111,630	(33)%
Gross profit	103,404	128,401	(19)%
Gross profit percentage	58 %	53 %	
Selling, general and administrative expenses	81,961	93,030	(12)%
Research and development expenses	19,696	32,319	(39)%
Impairment of intangibles	72,183	283,747	(75)%
Total operating expenses	173,840	409,096	(58)%
Interest expense and amortization of debt discount	14,396	18,211	(21)%
Other non-operating gain	(546)	(884)	(38)%
Total other non-operating expense	13,850	17,327	(20)%
Loss before income taxes	(84,286)	(298,022)	(72)%
Income tax benefit	4,697	27,121	(83)%
Net loss	$ (79,589)	$ (270,901)	(71)%

Revenue

The following table presents total revenues for the years ended December 31, 2020 and 2019 (dollars in thousands):

	Year Ended December 31,		
	2020	2019	% Change
Venlafaxine ER (VERT)	$ 25,576	$ 75,601	(66)%
Methylphenidate ER	31,699	73,205	(57)%
Divigel	31,629	26,794	18 %
Nitrofurantoin	10,443	5,726	82 %
Lorzone	4,058	15,004	(73)%
OB Complete	6,948	9,851	(29)%
Other	35,497	29,291	21 %
Net product sales	145,850	235,472	(38)%
Royalty revenue	4,107	3,641	13 %
Licensing and contract revenue	27,927	918	2,942 %
Total revenues	$ 177,884	$ 240,031	(26)%

Total revenues decreased by $62.1 million to $177.9 million for the year ended December 31, 2020, as compared to $240.0 million for the year ended December 31, 2019 primarily due to a decrease in net product sales, partially offset by higher licensing and contract revenue.

Net Product Sales. Net product sales decreased by $89.6 million to $145.9 million for the year ended December 31, 2020, as compared to $235.5 million for the year ended December 31, 2019. Approximately $52.2 million of this decrease was attributable to lower realized prices, and approximately $37.4 million was due to lower volumes of products sold. Net product sales of methylphenidate ER (including M-72), decreased 57% due to price erosion from generic competitors resulting in significantly lower net selling prices and lower volumes. Product sales from VERT decreased by 66% for the year ended December 31, 2020 due to additional generic competition resulting in lower volumes and net realized selling prices. During the first quarter of 2020 two competitors launched competing dosage strengths of VERT which negatively affected selling prices and volumes. We expect that the additional competition for both methylphenidate ER and VERT from these competitors, as well as additional generic product approvals and launches in the future, if any, will continue to negatively affect our sales of these products in 2021 and future years. VERT sales were favorably impacted by $6.4 million, in the aggregate related to product returns during the twelve months ended December 31, 2020 based on actual experience. There can be no assurance that actual product returns experience and other adjustments will continue to favorably impact net sales in 2021 and in future years.

Product sales from Lorzone declined 73% for the year ended December 31, 2020, reflecting lower volume due to the launch of generic competitors in late 2019 and 2020, and transition of sales to the Company's authorized generic product during the period. We expect that additional competition for Lorzone from current competitors, as well as additional generic product approvals and launches in the future, if any, will continue to negatively affect our sales of Lorzone during 2021 and in future years. Product sales from Divigel increased by 18%, driven primarily by the launch of a new dosage strength in 2020 together with targeted promotional activities and strong patient access. Product sales from the OB Complete family of prescription prenatal dietary supplements decreased by $2.9 million or 29% during 2020 due to lower volumes sold reflecting a shift of promotional resources to another product. Sales of Nitrofurantoin increased 82% as the 2020 represented the first full year of sales following the product's launch during 2019. Other product sales increased by 21%, largely due to other non-promoted products during the year.

Royalty Revenue. Royalty revenue increased by $0.5 million for the year ended December 31, 2020, compared to the prior year period, primarily due to higher product sales by license partners during the year.

Licensing and Contract Revenue. Licensing and contract revenue increased by $27.0 million in 2020 primarily reflecting license agreement with Santen Pharmaceutical Co. Ltd, granting the exclusive development, registration, and commercialization rights to RVL-1201 in Japan, China, and other Asian countries as well as EMEA countries. Under the agreement, the Company received an upfront milestone payment of $25.0 million.

Cost of Goods Sold and Gross Profit Percentage

The following table presents a breakdown of total cost of goods sold for the years ended December 31, 2020 and 2019 (dollars in thousands):

	Year Ended December 31,		
	2020	2019	% Change
Amortization of intangible assets	$ 16,046	$ 52,657	(70)%
Depreciation expense	1,492	2,343	(36)%
Royalty expense	9,283	10,198	(9)%
Other cost of goods sold	47,659	46,432	3 %
Total cost of goods sold	$ 74,480	$ 111,630	(33)%

Total cost of goods sold decreased $37.2 million in the year ended December 31, 2020 to $74.5 million as compared to $111.6 million in the year ended December 31, 2019, primarily driven by a $36.6 million decrease in amortization of intangible assets, due to lower amortization for methylphenidate ER and VERT. Royalty expense decreased by $0.9 million due to decrease in net sales of certain royalty products. There was no material change in depreciation expense or other cost of goods sold.

Gross profit percentage increased to 58% for the year ended December 31, 2020 compared to 53% for the year ended December 31, 2019. Excluding amortization and depreciation, our gross profit percentage for the year ended December 31, 2020 was 68% as compared to 76% for the year ended December 31, 2019 largely due to higher unit production costs and sample costs associated with the launch of Upneeq, partially offset by lower inventory reserves and royalty expense.

Selling, General and Administrative Expenses

Selling, general and administrative expenses decreased $11.0 million in the year ended December 31, 2020 to $82.0 million as compared to $93.0 million in the year ended December 31, 2019. The decrease in our selling, general and administrative expenses reflects salesforce reductions in the third quarter of 2019 and the first quarter of 2020, partially offset by higher marketing expenses associated with the launch of Upneeq and higher general and administrative expenses largely due to costs associated with the Santen license transaction and legal expenses during the year.

Research and Development Expenses

Research and development expenses decreased by $12.6 million in the year ended December 31, 2020 to $19.7 million as compared to $32.3 million in the year ended December 31, 2019. The decrease primarily reflects the completion of the Phase III clinical trials of both arbaclofen ER and RVL-1201 during the first and second quarters of 2019, respectively, and the NDA filing fees for RVL-1201 incurred in the third quarter of 2019.

The following table summarizes our research and development expenses incurred for the periods indicated (dollars in thousands):

	Year Ended December 31,		
	2020	2019	% Change
Arbaclofen ER	3,146	7,430	(58)%
RVL-1201	3,257	7,059	(54)%
Other	13,293	17,830	(25)%
Total	$ 19,696	$ 32,319	(39)%

Impairment of Intangible Assets and Goodwill

Impairments of intangible assets and goodwill for the year-ended December 31, 2020 was $72.2 million primarily consisting of write-downs to fair value for methylphenidate ER, VERT, arbaclofen ER and Oxybutynin of $19.5 million, $20.2 million, $28.9 million and $3.6 million, respectively, including an indefinite-lived In-Process R&D asset, arbaclofen ER, which resulted in an impairment charge of $28.9 million due to a delay in the anticipated launch of the product candidate, if approved. The impairments of methylphenidate ER, VERT and Oxybutynin reflect the competitive generic environment which has continued to erode net realized pricing and volumes of these products, while the impairment of Onitnua ER reflects a delay in its anticpated commericialization should the product be approved by the FDA. In the fourth quarter of 2020 we recognized an impairment of finite-lived development technology and product rights for VERT of $10.7 million and $9.5 million, respectively due to the approval of a competing product and the anticipated deterioration of pricing and volumes, and an impairment of indefinite-lived intangible assets for arbaclofen ER of $28.9 million.

Impairment of intangible assets was $283.7 million during the year ended December 31, 2019 primarily consisting of write-downs to fair value of methylphenidate ER, VERT, Osmolex ER, and Corvite of $128.1 million, $137.7 million, $17.7 million, and $0.2 million, respectively. Methylphenidate ER tablets and VERT were impaired due to lower revenues reflecting an increasingly competitive environment which deteriorated pricing and volumes; Osmolex ER was impaired due to underperforming revenue expectations subsequent to the launch of the product; and Corvite was impaired due to the discontinuation of the product. In the third and fourth quarter of 2019, we also recognized an impairment of finite-lived development technology and product rights for VERT of $73.0 million and $64.7 million, respectively, due to approvals of competing products which deteriorated pricing and volumes.

The following table details the impairment charges for such periods (in thousands):

	Year Ended December 31, 2020	
Asset/Asset Group	**Impairment Charge**	**Reason For Impairment**
Product Rights		
Methylphenidate ER	$ 19,539	Lower revenue due to generic competition.
	19,539	
Developed Technology		
Venlafaxine ER	10,655	Lower revenue due to generic competition.
Oxybutynin	3,618	Lower revenue expectations
	14,273	Lower anticipated revenue due to generic competition.
Distribution Rights		
Venlafaxine ER	9,461	Lower revenue due to generic competition.
In-Process R&D		
Arbaclofen ER	28,910	Delay in anticipated commercialization of the product candidate, if approved.
Total Impairment Charges for year ended December 31, 2020	$ 72,183	

	Year Ended December 31, 2019	
Asset/Asset Group	**Impairment Charge**	**Reason For Impairment**
Product Rights		
Osmolex ER	$ 17,730	Lower than expected volume
Methylphenidate ER	128,113	Lower revenue due to generic competition.
Corvite	190	Discontinued formulation
	146,033	
Product Rights		
Venlafaxine ER	72,995	Revenue underperforming expectations due to new generic market entrants.
Distribution Rights		
Venlafaxine ER	64,719	Revenue underperforming expectations due to new generic market entrants.
Total Impairment Charges for year ended December 31, 2019	$ 283,747	

Impairment of Fixed Assets

Fixed asset impairments for the years ended December 31, 2020 and 2019 were less than $0.1 million and $0.1 million, respectively, due to the abandonment of information technology in both 2020 and 2019 and warehouse assets in 2019.

Interest Expense and Amortization of Debt Discount

Interest expense and amortization of debt discount decreased by $3.8 million in the year ended December 31, 2020 to $14.4 million as compared to $18.2 million in the year ended December 31, 2019. The decrease in borrowing costs reflects lower levels of indebtedness following the prepayment of debt in the third quarter of 2020, and lower interest rates.

Other Non-operating (Income) Expenses, net

Other non-operating (income) expense was $(0.6) million and $(0.9) million for the years ended December 31, 2020 and 2019, respectively.

Income Tax Benefit

	Year Ended December 31,	
	2020	2019
	(dollars in thousands)	
Income tax benefit	$ 4,697	$ 27,121
Effective tax rate	5.6 %	9.1 %

Income tax benefit decreased by $22.4 million in the year ended December 31, 2020 to $4.7 million as compared to $27.1 million in the year ended December 31, 2019. The significant difference in the 2020 income tax benefit was the result of recording a valuation allowance in 2019.

Liquidity and Capital Resources

Our principal sources of liquidity are cash generated from operations and amounts available to be drawn under our Revolving Credit Facility, or Revolver. Our primary uses of cash are to fund operating expenses, product development costs, capital expenditures, debt service payments, as well as strategic business and product acquisitions.

As of December 31, 2020, we had cash and cash equivalents of $114.1 million and borrowing availability under the Revolver of $50.0 million. We also had $221.3 million aggregate principal amount borrowed under our term loans. During the year ended December 31, 2020 we generated $17.6 million of cash flows from operations, and during the year ended December 31, 2019, we generated cash flows from operations of $33.6 million. We expect to generate positive cash flow from operations in the future through sales of our existing products; however, we expect our levels of cash flow generated to be lower or negative in the near term due to price erosion on our generic products and new product launch expenses associated with the launch of Upneeq and possible future price erosion on our other products.

As of December 31, 2020, the interest rate was 4.75% and 5.25% for our Term A Loan and Term B Loan, respectively. As of December 31, 2019, the interest rate was 5.79% and 6.29% for our Term A Loan and Term B Loan, respectively.

At December 31, 2020, there were no outstanding borrowings or outstanding letters of credit under the Revolver. Availability under the Revolver as of December 31, 2020 was $50.0 million.

On January 13, 2020 we completed a follow-on equity offering and allotted 6,900,000 ordinary share at a public offering price of $5.00 per share. The number of shares issued in this offering reflected the exercise in full of the underwriters' option to purchase 900,000 ordinary shares. The aggregate net proceeds from the follow-on offering were approximately $31.8 million after deducting underwriting discounts and commissions and offering expenses. Proceeds from the offering were used for working capital and general corporate purposes.

On July 16, 2020 we completed a follow-on equity offering and allotted 5.0 million ordinary shares. The aggregate proceeds from the follow-on offering were approximately $30.4 million after deducting offering expenses. Proceeds from the offering will be used for working capital and general corporate purposes.

Our non-promoted products, including methylphenidate ER and VERT compete in generic markets for which competition has eroded, and will continue to erode, profitability over time. During the year ended December 31, 2020, there were two launches of generic VERT, and as of December 31, 2020 there were six approved AB rated generic forms of Lorzone. Additionally, there was an additional approval of competing dosage strengths of VERT during 2020 which launched in early 2021. As a result, we have experienced, and anticipate that we will continue to experience, price erosion negatively affecting profitability of these products and possibly others in 2021 and future years.

The Company's future operating performance and adequacy of cash resources depends on many assumptions, including assumptions with respect to product sales and expenses, commercialization costs, research and development expenses as well as other factors. These assumptions may prove to be wrong or other factors may adversely affect the Company's operating results. As a result, the Company's operating results may fluctuate significantly quarter to quarter or year to year. The Company expects its near term levels of profitability and cash flow to be negatively affected by price competition on our generic products, and increased expenses associated with new product launches. As a result, it's possible the Company would not be able to comply with financial covenants in its credit agreement or generate sufficient cash to service its debt obligations. This could, among other things, force us to raise additional funds or force us to reduce our expenses through cost cutting measures either of which could have a material adverse affect on our business.

The Company is currently undertaking a comprehensive review of strategic options to maximize shareholder value. The options under consideration include asset disposals, re-financings and commercialization or collaboration agreements. In the event the Company is unable to generate sufficient proceeds from these strategic options such that it can reduce, retire or refinance its existing debt, the Company believes it has sufficient plans to effectively manage its expenses and avail itself of cure provisions provided for in its credit agreement, in order to maintain compliance with its debt covenants therein. The use of the cure provisions will result in the utilization cash to prepay debt.

A significant portion of the Company's expense base is discretionary and the Company has the ability to reduce or defer spending to reduce expenses and improve profitability and cash flow to maintain compliance with its debt covenants. This could include, among other things, significant reductions in its general and administrative expenses, research and development expenses, including deferral of clinical trial programs, and deferrals of certain promotional and capital spending programs which could negatively impact the Company's revenue growth and plans. The Company has previously demonstrated an ability to implement various cost reduction initiatives. During the third quarter of 2019 and continuing into 2020, the Company reduced its field force by an aggregate of 90 positions, generating annualized savings of approximately $10 million, and took measures to realign its operating infrastructure to prepare for the launch of Upneeq and implemented other cost-savings measures to reduce its expenses.

Based on the current facts and circumstances, the use of the cure provisions provided for in the credit agreement, which will result in utilizing cash to prepay debt, and the Company's ability to implement spending reductions and program deferrals, we believe it is probable that the Company can effectively manage its spending to improve profitability in order to maintain compliance with the debt covenants and other obligations in our credit agreement for at least the next 12 months, even if the strategic review does not generate sufficient proceeds to reduce, retire or refinance our existing debt. As a result, the Company has concluded that, after consideration of management's plans our existing cash and cash equivalents, together with cash enerated from operations, will be sufficient to meet our anticipated cash needs for the next 12 months.

To the extent that we raise additional capital through the sale of equity or convertible debt securities, our shareholders' ownership interests will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our shareholders. Additionally, certain financings may require the consent of the lenders under our senior secured credit facilities. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may have to relinquish valuable rights to our intellectual property, technologies, future revenue streams, research programs or product candidates or to grant licenses on terms that may not be favorable to us.

Cash Flows

The following table provides information regarding our cash flows for the periods indicated (in thousands):

	Year Ended December 31,		
	2020	2019	Change
Net cash provided by operating activities	$ 17,590	$ 33,567	$ (15,977)
Net cash used in investing activities	(3,084)	(4,020)	936
Net cash provided by (used in) financing activities	3,682	(4,691)	8,373
Effect on cash of changes in exchange rate	—	175	(175)
Net increase in cash and cash equivalents	$ 18,188	$ 25,031	$ (6,843)

Net cash provided by operating activities

Cash flows from operating activities are primarily driven by earnings from operations (excluding the impact of non-cash items), the timing of cash receipts and disbursements related to accounts receivable and accounts payable and the timing of inventory transactions and changes in other working capital amounts. Net cash provided by operating activities was $17.6 million and $33.6 million for the years ended December 31, 2020 and 2019, respectively. The decrease in cash provided by operating activities in the year ended December 31, 2020, as compared to year ended December 31, 2019, was primarily as a result of lower net income after considering non-cash adjustments, partially offset by higher cash provided from operating assets and liabilities, particularly accounts receivable and inventories as compared to the year ended December 31, 2019.

Net cash used in investing activities

Our uses of cash in investing activities during the years ended December 31, 2020 and 2019 reflected purchases of property, plant and equipment and were $3.1 million and $4.0 million, respectively.

Net cash provided by (used in) financing activities

Net cash provided by financing activities of $3.7 million during 2020 largely reflecting net proceeds raised from equity offerings in January and July, 2020, offset by prepayments of term loans in the third quarter of 2020, and share repurchases.

Net cash used by financing activities of $4.7 million during the year ended December 31, 2019 primarily related to the $1.8 million of net repayments of insurance premium financing and by $2.8 million repurchase of ordinary shares.

Contractual Obligations

The following table lists our contractual obligations as of December 31, 2020.

	Payments due by period (in thousands)				
	Total	Less than 1 year	1 - 3 years	3 - 5 years	More than 5 years
Long-term debt obligations[1]	219,525	—	219,525	—	—
Interest expense[2]	21,134	10,686	10,448	—	—
Capital lease obligations[3]	44	40	4	—	—
Operating lease obligations[4]	3,098	1,589	1,509	—	—
Royalty obligations[5]	6,083	1,000	3,000	2,000	83
Total	249,884	13,315	234,486	2,000	83

(1) Represents the remaining principal amount under our senior secured credit facilities, which is due on December 21, 2022.

(2) These amounts represent future cash interest payments related to our existing debt obligations based on variable interest rates specified in the senior secured credit facilities. Payments related to variable debt are based on applicable rates at December 31, 2020 plus the specified margin in the senior secured credit facilities for each period presented. As of December 31, 2020, the interest rate was 4.75% for Term A Loan and 5.25% for Term B Loan.

(3) Includes minimum cash payments related to certain fixed assets, primarily office equipment.

(4) Includes minimum cash payments related to our leased offices and warehouse facilities under non-cancelable leases in New Jersey, Florida, North Carolina, as well as in Argentina.

(5) Includes obligations to make minimum annual royalty payments.

Our liability for unrecognized tax benefits has been excluded from the above contractual obligations table as the nature and timing of future payments, if any, cannot be reasonably estimated. As of December 31, 2020, our liability for unrecognized tax benefits was $0.2 million (excluding interest and penalties). We do not anticipate that the amount of our liability for unrecognized tax benefits will significantly change in the next 12 months.

Critical Accounting Estimates

The significant accounting policies and basis of presentation are described in Note 2, *Summary of Significant Accounting Policies* to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Summary of Significant Accounting Policies. The preparation of our consolidated financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses and the related disclosures in the notes thereto. Some of these estimates can be subjective and complex. Although we believe that our estimates and assumptions are reasonable, there may be other reasonable estimates or assumptions that differ significantly from ours. Further, our estimates and assumptions are based upon information available at the time they were made. Actual results could differ from those estimates.

In order to understand our consolidated financial statements, it is important to understand our critical accounting estimates. We consider an accounting estimate to be critical if: (i) the accounting estimate requires us to make assumptions about matters that were highly uncertain at the time the accounting estimate was made and (ii) changes in the estimate that are reasonably likely to occur from period to period, or use of different estimates that we reasonably could have used in the current period, would have a material impact on our financial condition, results of operations or cash flows. We believe the following accounting policies and estimates to be critical:

Revenue Recognition

Upon adoption of Accounting Standards Update ("ASU") No. 2014-09, *Revenue from Contracts with Customers* (ASC Topic 606) on January 1, 2018, we recognize revenue as described below. The implementation of the new revenue recognition standard did not have a material impact on our consolidated financial statements.

Product Sales—Revenue is recognized at the point in time when our performance obligations with our customers have been satisfied. At contract inception, we determine if the contract is within the scope of ASC Topic 606 and then evaluate the contract using the following five steps: (1) identify the contract with the customer; (2) identify the performance obligations; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations; and (5) recognize revenue at the point in time when the Company satisfies a performance obligation.

Revenue is recorded at the transaction price, which is the amount of consideration we expect to receive in exchange for transferring products to a customer. We consider the unit of account for each purchase order that contains more than one product. Because all products in a given purchase order are generally delivered at the same time and the method of

revenue recognition is the same for each, there is no need to separate an individual order into separate performance obligations. In the event that we fulfilled an order only partially because a requested item is on backorder, the portion of the purchase order covering the item is generally cancelled, and the customer has the option to submit a new one for the backordered item. We determine the transaction price based on fixed consideration in our contractual agreements, which includes estimates of variable consideration, and the transaction price is allocated entirely to the performance obligation to provide pharmaceutical products. In determining the transaction price, a significant financing component does not exist since the timing from when we deliver product to when the customers pay for the product is less than one year and the customers do not pay for product in advance of the transfer of the product.

We record product sales net of any variable consideration, which includes estimated chargebacks, commercial rebates, discounts and allowances and doubtful accounts. We utilize the expected value method to estimate all elements of variable consideration included in the transaction. The variable consideration is recorded as a reduction of revenue at the time revenues are recognized. We will only recognize revenue to the extent that it is probable that a significant revenue reversal will not occur in a future period. These estimates may differ from actual consideration amount received and we will re-assess these estimates each reporting period to reflect known changes in factors.

Royalty Revenue—For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, we recognize revenue at the later of (a) when the related sales occur, or (b) when the performance obligation to which some or all the royalty has been allocated has been satisfied (or substantially satisfied).

Licensing and Contract Revenue— We have arrangements with commercial partners that allow for the purchase of product from us by the commercial partner for purposes of sub-distribution. We recognize revenue from an arrangement when control of such product is transferred to the commercial partner, which is typically upon delivery. In these situations the performance obligation is satisfied when product is delivered to our commercial partner. Licensing revenue is recognized in the period in which the product subject to the sublicensing arrangement is sold. Sales deductions, such as returns on product sales, government program rebates, price adjustments, and prompt pay discounts in regard to licensing revenue is generally the responsibility of our commercial partners and not recorded by us.

Freight—We record amounts billed to customers for shipping and handling as revenue, and record shipping and handling expenses related to product sales as cost of goods sold. We account for shipping and handling activities related to contracts with customers as costs to fulfill the promise to transfer the associated products. When shipping and handling costs are incurred after a customer obtains control of the products, we also have elected to account for these as costs to fulfill the promise and not as a separate performance obligation.

Sales Deductions

Product sales are recorded net of estimated chargebacks, commercial and governmental rebates, discounts, allowances, copay discounts, advertising and promotions and estimated product returns, or collectively, “sales deductions.”

Provision for estimated chargebacks, certain commercial rebates, discounts and allowances and doubtful accounts settled in sales credits at the time of sales are analyzed and adjusted, if necessary, monthly and recorded against gross trade accounts receivable. Estimated product returns, certain commercial and governmental rebates and customer coupons settled in cash are analyzed and adjusted, if necessary, monthly and recorded as a component of accrued expenses.

Calculating certain of these items involves estimates and judgments based on sales or invoice data, contractual terms, historical utilization rates, new information regarding changes in applicable regulations and guidelines that would impact the amount of the actual rebates, our expectations regarding future utilization rates and estimated customer inventory levels. Amounts accrued for sales deductions are adjusted when trends or significant events indicate that adjustment is appropriate and to reflect actual experience. The most significant items deducted from gross product sales where we exercise judgment are chargebacks, commercial and governmental rebates, product returns, discounts and allowances and advertising and promotions.

Where available, we have relied on information received from our wholesaler customers about the quantities of inventory held, including the information received pursuant to days of sales outstanding, which we have not independently verified. For other customers, we have estimated inventory held based on buying patterns. In addition, we have evaluated market conditions for products primarily through the analysis of wholesaler and other third party sell-through, as well as internally-generated information, to assess factors that could impact expected product demand at December 31, 2020 and December 31, 2019. We believe that the estimated level of inventory held by our customers is within a reasonable range as compared to both: (i) historical amounts and (ii) expected demand for the products that represent a majority of the volume at December 31, 2020 and December 31, 2019.

If the assumptions we use to calculate our allowances for sales deductions do not appropriately reflect future activity, our financial position, results of operations and cash flows could be materially impacted.

The following table presents the activity and ending balances for our product sales provisions for the years ended December 31, 2020 and 2019 (in thousands):

	Chargebacks	Commercial Rebates	Government and Managed Care Rebates	Product Returns	Discounts and Allowances	Total
Balance at December 31, 2018	$ 38,861	$ 49,232	$ 9,981	$ 48,464	$ 3,510	$ 150,048
Provision	345,366	147,173	20,092	(3,932)	15,719	524,418
Charges processed	(369,603)	(182,826)	(25,206)	(11,075)	(17,638)	(606,348)
Balance at December 31, 2019	$ 14,624	$ 13,579	$ 4,867	$ 33,457	$ 1,591	$ 68,118
Provision	122,592	22,488	18,211	2,825	7,003	173,119
Charges processed	(127,295)	(28,723)	(19,633)	(14,256)	(7,819)	(197,726)
Balance December 31, 2020	$ 9,921	$ 7,344	$ 3,445	$ 22,026	$ 775	$ 43,511

Total items deducted from gross product sales were $173.1 million (excluding $2.5 million in provisions for advertising and promotion), or 53.8% as a percentage of gross product sales, during the year ended December 31, 2020. Total items deducted from gross product sales were $524.4 million (excluding $4.4 million in provisions for advertising and promotion), or 68.6% as a percentage of gross product sales, during the year ended December 31, 2019.

Chargebacks—We enter into contractual agreements with certain third parties such as retailers, hospitals and group-purchasing organizations, or GPOs, to sell certain products at predetermined prices. Most of the parties have elected to have these contracts administered through wholesalers that buy the product from us and subsequently sell it to these third parties. When a wholesaler sells products to one of these third parties that are subject to a contractual price agreement, the difference between the price paid to us by the wholesaler and the price under the specific contract is charged back to us by the wholesaler. Utilizing this information, we estimate a chargeback percentage for each product and record an allowance for chargebacks as a reduction to gross sales when we record our sale of the products. We reduce the chargeback allowance when a chargeback request from a wholesaler is processed. Our provision for chargebacks is fully reserved for at the time when sales revenues are recognized.

We obtain product inventory reports from major wholesalers to aid in analyzing the reasonableness of the chargeback allowance and to monitor whether wholesaler inventory levels do not significantly exceed customer demand. We assess the reasonableness of our chargeback allowance by applying a product chargeback percentage that is based on a combination of historical activity and current price and mix expectations to the quantities of inventory on hand at the wholesalers according to wholesaler inventory reports. In addition, we estimate the percentage of gross sales that were generated through direct and indirect sales channels and the percentage of contract compared to non-contract revenue in the period, as these each affect the estimated reserve calculation. In accordance with our accounting policy, we estimate the percentage amount of wholesaler inventory that will ultimately be sold to third parties that are subject to contractual price agreements based on a trend of such sales through wholesalers. We use this percentage estimate until historical trends indicate that a revision should be made. On an ongoing basis, we evaluate our actual chargeback rate experience, and new trends are factored into our estimates each quarter as market conditions change.

Events that could materially alter chargebacks include: changes in product pricing as a result of competitive market dynamics or negotiations with customers, changes in demand for specific products due to external factors such as competitor supply position or consumer preferences, customer shifts in buying patterns from direct to indirect through wholesalers, which could either individually or in aggregate increase or decrease the chargebacks depending on the direction and trend of the change(s).

Chargebacks were $122.6 million and $345.4 million, or 38.1% and 45.2% as a percentage of gross product sales, for the years ended December 31, 2020 and 2019, respectively. Chargebacks as a percentage of gross product sales decreased in 2020 as compared with 2019, primarily due to a change in product mix and pricing. We expect that chargebacks will continue to significantly impact our reported net product sales.

Commercial Rebates—We maintain an allowance for commercial rebates that we have in place with certain customers. Commercial rebates vary by product and by volume purchased by each eligible customer. We track sales by product number for each eligible customer and then apply the applicable commercial rebate percentage, using both historical trends and actual experience to estimate our commercial rebates. We reduce gross sales and increase the commercial rebates allowance by the estimated rebate amount when we sell our products to eligible customers. We reduce the commercial rebate allowance when we process a customer request for a rebate. At each month end, we analyze the allowance for commercial rebates against actual rebates processed and make necessary adjustments as appropriate. Our provision for commercial rebates is fully reserved for at the time sales revenues are recognized.

The allowance for commercial rebates takes into consideration price adjustments which are credits issued to reflect increases or decreases in the invoice or contract prices of our products. In the case of a price decrease, a shelf-stock adjustment credit is given for product remaining in customer's inventories at the time of the price reduction. Contractual price protection results in a similar credit when the invoice or contract prices of our products increase, effectively allowing customers to purchase products at previous prices for a specified period of time. Amounts recorded for estimated shelf-stock adjustments and price protections are based upon specified terms with direct customers, estimated changes in market prices, and estimates of inventory held by customers. We regularly monitor these and other factors and evaluate the reserve as additional information becomes available.

We ensure that commercial rebates are reasonable through review of contractual obligations, review of historical trends and evaluation of recent activity. Furthermore, other events that could materially alter commercial rebates include: changes in product pricing as a result of competitive market dynamics or negotiations with customers, changes in demand for specific products due to external factors such as competitor supply position or consumer preferences, customer shifts in buying patterns from direct to indirect through wholesalers, which could either individually or in aggregate increase or decrease the commercial rebates depending on the direction and velocity of the change(s).

Commercial rebates were $22.5 million and $147.2 million, or 7.0% and 19.3% as a percentage of gross product sales, for the years ended December 31, 2020 and 2019, respectively. Commercial rebates as a percentage of gross product sales decreased in 2020 as compared to 2019 primarily due to the change in product mix and customer contracts. We expect that commercial rebates will continue to significantly impact our reported net sales.

Government Program Rebates—Federal law requires that a pharmaceutical distributor, as a condition of having federal funds being made available to the states for the manufacturer's drugs under Medicaid and Medicare Part B, must enter into a rebate agreement to pay rebates to state Medicaid programs for the distributor's covered outpatient drugs that are dispensed to Medicaid beneficiaries and paid for by a state Medicaid program under a fee-for-service arrangement. CMS is responsible for administering the Medicaid rebate agreements between the federal government and pharmaceutical manufacturers. Rebates are also due on the utilization of Medicaid managed care organizations, or MMCOs. We also pay rebates to MCOs for the reimbursement of a portion of the sales price of prescriptions filled that are covered by the respective plans. The liability for Medicaid, Medicare and other government program rebates is settled in cash and is estimated based on historical and current rebate redemption and utilization rates contractually submitted by each state's program administrator and assumptions regarding future government program utilization for each product sold, and accordingly recorded as a reduction of product sales. Medicaid rebates are typically billed up to 180 days after the product is shipped, but can be as much as 270 days after the quarter in which the product is dispensed to the Medicaid participant. In addition to the estimates mentioned above, our calculation also requires other estimates, such as estimates

of sales mix, to determine which sales are subject to rebates and the amount of such rebates. Periodically, we adjust the Medicaid rebate provision based on actual claims paid. Due to the delay in billing, adjustments to actual claims paid may incorporate revisions of this provision for several periods. Because Medicaid pricing programs involve particularly difficult interpretations of complex statutes and regulatory guidance, our estimates could differ from actual experience.

Government program rebates were $18.2 million and $20.1 million, or 5.7% and 2.6% as a percentage of gross product sales, during the years ended December 31, 2020 and 2019, respectively.

Product Returns—Certain of our products are sold with the customer having the right to return the product within specified periods. Estimated return accruals are made at the time of sale based upon historical experience. Our return policy generally allows customers to receive credit for expired products within six months prior to expiration and within one year after expiration. Our provision for returns consists of our estimates for future product returns.

Historical factors such as one-time recall events as well as pending new developments such as comparable product approvals or significant pricing movement that may impact the expected level of returns are taken into account monthly to determine the appropriate accrued expense. As part of the evaluation of the liability required, we consider actual returns to date that are in process, the expected impact of any product recalls and the amount of wholesaler's inventory to assess the magnitude of unconsumed product that may result in product returns to us in the future. The product returns level can be impacted by factors such as overall market demand and market competition and availability for substitute products which can increase or decrease the pull through for sales of our products and ultimately impact the level of product returns. In determining our estimates for returns and allowances, we are required to make certain assumptions regarding the timing of the introduction of new products. In addition, we make certain assumptions with respect to the extent and pattern of decline associated with generic competition. To make these assessments, we utilize market data for similar products as analogs for our estimations. We use our best judgment to formulate these assumptions based on past experience and information available to us at the time. We continually reassess and make the appropriate changes to our estimates and assumptions as new information becomes available to us. Product returns are fully reserved for at the time when sales revenues are recognized.

Our estimate for returns may be impacted by a number of factors, but the principal factor relates to the level of inventory in the distribution channel. When we are aware of an increase in the level of inventory of our products in the distribution channel, we consider the reasons for the increase to determine whether we believe the increase is temporary or other-than-temporary. Increases in inventory levels assessed as temporary will not result in an adjustment to our provision for returns. Some of the factors that may be an indication that an increase in inventory levels will be temporary include:

- recently implemented or announced price increases for our products; and
- new product launches or expanded indications for our existing products.

Conversely, other-than-temporary increases in inventory levels may be an indication that future product returns could be higher than originally anticipated and, accordingly, we may need to adjust our provision for returns. Some of the factors that may be an indication that an increase in inventory levels will be other-than-temporary include:

- declining sales trends based on prescription demand;
- recent regulatory approvals to shorten the shelf life of our products, which could result in a period of higher returns;
- slow moving or obsolete product still in the distribution channel;
- introduction of new product(s) or generic competition;
- increasing price competition from generic competitors; and

- changes to the National Drug Codes, or NDCs, of our products, which could result in a period of higher returns related to product with the old NDC, as our customers generally permit only one NDC per product for identification and tracking within their inventory systems.

We ensure that product returns are reasonable through inspection of historical trends and evaluation of recent activity. Furthermore, other events that could materially alter product returns include: acquisitions and integration activities that consolidate dissimilar contract terms and could impact the return rate as typically we purchase smaller entities with less contracting power and integrate those product sales to our contracts; and consumer demand shifts by products, which could either increase or decrease the product returns depending on the product or products specifically demanded and ultimately returned.

Product returns were $2.8 million and $(3.9) million, or 0.9% and (0.5)% as a percentage of gross product sales, during the years ended December 31, 2020 and 2019, respectively. Product returns as a percentage of gross product sales decreased in 2020 as compared to 2019 primarily due to lower than expected returns processed. Product returns as a percentage of gross product sales are not expected to change materially for 2021.

Promotions and Co-Pay Discount Cards—From time to time we authorize various retailers to run in-store promotional sales of our products. We accrue an estimate of the dollar amount expected to be owed back to the retailer. Additionally, we provide consumer co-pay discount cards, administered through outside agents to provide discounted products when redeemed. Upon release of the cards into the market, we record an estimate of the dollar value of co-pay discounts expected to be utilized taking into consideration historical experience.

Advertising and promotions as a percentage of gross product sales did not change materially during the periods presented. Promotions and co-pay discount cards are included in advertising and promotions, which were $2.5 million and $4.4 million, or 0.86% and 0.6% as a percentage of gross product sales, during the years ended December 31, 2020 and 2019, respectively.

Discounts and allowances were $7.0 million and $15.7 million, or 2.2% and 2.1% as a percentage of gross product sales, during the years ended December 31, 2020 and 2019, respectively. Discounts and allowances as a percentage of gross product sales did not change materially during the periods presented and are not expected to change materially in 2021.

Valuation of long-lived assets

As of December 31, 2020, our combined long-lived assets balance, including property, plant and equipment and finite-lived intangible assets, is $58.7 million.

Long-lived assets, other than goodwill and other indefinite-lived intangibles, are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable through the estimated undiscounted future cash flows derived from such assets. Factors that we consider in deciding when to perform an impairment review include significant changes in our forecasted projections for the asset or asset group for reasons including, but not limited to, significant under-performance of a product in relation to expectations, significant changes or planned changes in our use of the assets, significant negative industry or economic trends, and new or competing products that enter the marketplace. The impairment test is based on a comparison of the undiscounted cash flows expected to be generated from the use of the asset group.

Our long-lived intangible assets, which consist of distribution rights, product rights, tradenames and developed technology, are initially recorded at fair value upon acquisition. To the extent they are deemed to have finite lives, they are then amortized over their estimated useful lives using either the straight-line method or based on the expected pattern of cash flows. Factors giving rise to our initial estimate of useful lives are subject to change. Significant changes to any of these factors may result in a reduction in the useful life of the asset and an acceleration of related amortization expense, which could cause our operating income, net income and net income per share to decrease.

Recoverability of an asset that will continue to be used in our operations is measured by comparing the carrying amount of the asset to the forecasted undiscounted future cash flows related to the asset. In the event the carrying amount of the

asset exceeds its undiscounted future cash flows and the carrying amount is not considered recoverable, impairment may exist. If impairment is indicated, the asset is written down by the amount by which the carrying value of the asset exceeds the related fair value of the asset with the related impairment charge recognized within the statements of operations. Our reviews of long-lived assets during the two years ended December 31, 2020 and 2019 resulted in certain impairment charges. These charges relate to both finite and indefinite-lived intangible assets, which are described in Note 7, *Goodwill and Other Intangible Assets,* to our consolidated financial statements.

These impairment charges were generally based on fair value estimates determined using either discounted cash flow models or preliminary offers from prospective buyers. The discounted cash flow models include assumptions related to product revenue, growth rates and operating margin. These assumptions are based on management's annual and ongoing budgeting, forecasting and planning processes and represent our best estimate of future product cash flows. These estimates are subject to the economic environment in which we operate, demand for the products and competitor actions. The use of different assumptions would have increased or decreased our estimated discounted future cash flows and the resulting estimated fair values of these assets, causing increases or decreases in the resulting asset impairment charges. Events giving rise to impairment are an inherent risk in the pharmaceutical industry and cannot be predicted.

We recorded impairment charges of $72.2 million and $283.7 million, regarding definite-lived and indefinite-lived intangible assets for the years ended December 31, 2020 and 2019, respectively.

Goodwill and indefinite-lived intangible assets

Goodwill and indefinite-lived intangible assets are assessed for impairment on an annual basis as of October 1st of each year or more frequently if events or changes in circumstances indicate that the asset might be impaired.

Goodwill Impairment Assessment—We are organized in one reporting unit and evaluate goodwill for our company as a whole. Under the authoritative guidance issued by the Financial Accounting Standards Board, or FASB, we have the option to first assess the qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform a quantitative goodwill impairment test. If we determine that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then the goodwill impairment test is performed. As further described in Note 2, *Summary of Significant Accounting Policies* to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K, effective January 1, 2017, we early adopted Accounting Standards Update (ASU) No. 2017-04 *"Intangibles — Goodwill and Other (Topic 350): Simplifying the Accounting for Goodwill Impairment"* (ASU 2017-04). Subsequent to adoption, we perform our goodwill impairment tests by comparing the fair value and carrying amount of our reporting unit. Any goodwill impairment charges we recognize for our reporting unit are equal to the lesser of (i) the total goodwill allocated to that reporting unit and (ii) the amount by which that reporting unit's carrying amount exceeds its fair value.

The goodwill impairment test requires us to estimate the fair value of the reporting unit and to compare the fair value of the reporting unit with its carrying amount. If the carrying value exceeds its fair value, an impairment charge is recorded for the difference. If the carrying value recorded is less than the fair value calculated then no impairment loss is recognized. The fair value of our reporting unit is determined using an income approach that utilizes a discounted cash flow model or, where appropriate, the market approach, or a combination thereof. The discounted cash flow models are dependent upon our estimates of future cash flows and other factors. Our estimates of future cash flows are based on a comprehensive product by product forecast over a ten-year period and involve assumptions concerning (i) future operating performance, including future sales, long-term growth rates, operating margins, variations in the amounts, allocation and timing of cash flows and the probability of achieving the estimated cash flows and (ii) future economic conditions, all which may differ from actual future cash flows.

Assumptions related to future operating performance are based on management's annual and ongoing budgeting, forecasting and planning processes and represent our best estimate of the future results of our operations as of a point in time. These estimates are subject to many assumptions, such as the economic environments in which we operate, demand for the products and competitor actions. Estimated future cash flows are discounted to present value using a market participant, weighted average cost of capital. The financial and credit market volatility directly impacts certain

inputs and assumptions used to develop the weighted average cost of capital such as the risk-free interest rate, industry beta, debt interest rate and our market capital structure. These assumptions are based on significant inputs not observable in the market and thus represent Level 3 measurements within the fair value hierarchy. The use of different inputs and assumptions could increase or decrease our estimated discounted future cash flows, the resulting estimated fair values and the amounts of related goodwill impairments, if any. The discount rates applied to the estimated cash flows for our October 1, 2020 and 2019 annual goodwill impairment test were 19.5% and 16.5%, respectively, depending on the overall risk associated with the particular asset and other market factors. We believe the discount rates and other inputs and assumptions are consistent with those that a market participant would use.

Based on the quantitative goodwill impairment assessment performed, we determined that there was no impairment of goodwill as of October 1, 2020 and for the year ended December 31, 2020. An increase of 50 basis points to our assumed discount rate used in our goodwill assessment would not have materially changed the results of our analyses.

IPR&D Intangible Asset Impairment Assessment—IPR&D, which are indefinite-lived intangible assets representing the value assigned to acquired Research and Development, or R&D, projects that principally represent rights to develop and sell a product that we have acquired which has not yet been completed or approved. These assets are subject to impairment testing until completion or abandonment of each project. We have the option to perform a qualitative assessment to determine whether it is more likely than not that the fair value of the asset is less than its carrying value. If we elect not to conduct the qualitative assessment or if indications of a potential impairment exist, the determination of whether an impairment has occurred requires the determination of the fair value of the asset being assessed. Under the qualitative assessment, we consider several qualitative factors, including the results from the last quantitative test, changes, if any, in the status of regulatory and commercial success risks, and competitive trends impacting each asset and changes in the related cash flow stream projections.

Under a qualitative assessment, the fair value of our indefinite-lived intangible assets is determined using an income approach that utilizes a discounted cash flow model and requires the development of significant estimates and assumptions involving the determination of estimated net cash flows for each year for each project or product (including net revenues, cost of sales, R&D costs, selling and marketing costs and other costs which may be allocated), the appropriate discount rate to select in order to measure the risk inherent in each future cash flow stream, the assessment of each asset's life cycle, the potential regulatory and commercial success risks, and competitive trends impacting each asset and related cash flow stream as well as other factors. Indefinite-lived intangible assets classified as in-process research and development, or IPRD, are subject to adjustments reducing their anticipated revenues and costs by a probability of success, or POS, factor based upon empirical research of probabilities a new drug candidate would be approved based on the candidate's stage of clinical development. During the period ended, December 31, 2020, the POS factor applied to the IPRD asset was 69.6% and the discount rate was 9.5%. The major risks and uncertainties associated with the timely and successful completion of the IPR&D projects include legal risk, market risk and regulatory risk. If applicable, upon abandonment of the IPR&D product, the assets are reduced to zero. Upon approval of the products in development for sale and placement into service, the associated IPR&D intangible assets are transferred to Product Rights amortizing intangible assets. The useful life of an amortizing asset generally is determined by identifying the period in which substantially all of the cash flows are expected to be generated.

If the fair value of the IPR&D is less than its carrying amount, an impairment loss is recognized for the difference. Based on results of the impairment assessment performed, we did recognized an impairment change to IPR&D of $28.9 million for the year ended December 31, 2020 and we did not recognize an impairment charge of IPR&D for the year ended December 31, 2019. The 2020 impairment charge reflects the delay in our anticipated commercialization date if this product candidate is approved.

Income Taxes

Income taxes are recorded under the asset and liability method of accounting. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled.

Deferred income tax assets are reduced, as is necessary, by a valuation allowance when we determine it is more-likely-than-not that some or all of the tax benefits will not be realizable in the future. Realization of the deferred tax assets is dependent on a variety of factors, some of which are subjective in nature, including the generation of future taxable income, the amount and timing of which are uncertain. In evaluating the ability to recover the deferred tax assets, we consider all available positive and negative evidence, including cumulative income in recent fiscal years, the forecast of future taxable income exclusive of certain reversing temporary differences and significant risks and uncertainties related to our business. In determining future taxable income, management is responsible for assumptions utilized including, but not limited to, the amount of U.S. federal, state and international pre-tax operating income, the reversal of certain temporary differences, carryforward periods available to us for tax reporting purposes, the implementation of feasible and prudent tax planning strategies and other relevant factors. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates that we are using to manage the underlying business. We assess the need for a valuation allowance each reporting period, and would record any material changes that may result from such assessment to income tax expense in that period.

We account for uncertain tax positions in accordance with ASC 740-10, *Accounting for Uncertainty in Income Taxes.* We assess all material positions taken in any income tax return, including all significant uncertain positions, in all tax years that are still subject to assessment or challenge by relevant taxing authorities. Assessing an uncertain tax position begins with the initial determination of the position's sustainability and is measured at the largest amount of benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. The evaluation of unrecognized tax benefits is based on factors that include, but are not limited to, changes in tax law, the measurement of tax positions taken or expected to be taken in tax returns, the effective settlement of matters subject to audit, new audit activity and changes in facts or circumstances related to a tax position. We evaluate unrecognized tax benefits and adjust the level of the liability to reflect any subsequent changes in the relevant facts surrounding the uncertain positions. The liabilities for unrecognized tax benefits can be relieved only if the contingency becomes legally extinguished through either payment to the taxing authority or the expiration of the statute of limitations, the recognition of the benefits associated with the position meet the more-likely-than-not threshold or the liability becomes effectively settled through the examination process. We consider matters to be effectively settled once the taxing authority has completed all of its required or expected examination procedures, including all appeals and administrative reviews. We also accrue for potential interest and penalties related to unrecognized tax benefits in income tax benefit.

The most significant tax jurisdictions are Ireland, the United States, Argentina and Hungary. Significant estimates are required in determining the provision for income taxes. Some of these estimates are based on management's interpretations of jurisdiction-specific tax laws or regulations and the likelihood of settlement related to tax audit issues. Various internal and external factors may have favorable or unfavorable effects on the future effective income tax rate. These factors include, but are not limited to, changes in tax laws, regulations or rates, changing interpretations of existing tax laws or regulations, changes in estimates of prior years' items, changes in the international organization, likelihood of settlement, and changes in overall levels of income before taxes.

As of December 31, 2020 and 2019, the Company has a federal net operating loss carryover of $29.1 million and $2.2 million, respectively and net operating loss carryovers in certain foreign tax jurisdictions of $3.8 million and $9.9 million, respectively which will begin to expire in 2022. At December 31, 2020 and 2019, the Company had total tax credit carryovers of approximately $6.7 million and $4.6 million, respectively, primarily consisting of Federal Orphan Drug Tax Credit carryovers. These credit carryovers are expected to be fully realized prior to their expiration, beginning in 2035.

We make an evaluation at the end of each reporting period as to whether or not some or all of the undistributed earnings of our subsidiaries are indefinitely reinvested. While we have concluded in the past that some of such undistributed earnings are indefinitely reinvested, facts and circumstances may change in the future. Changes in facts and circumstances may include a change in the estimated capital needs of our subsidiaries, or a change in our corporate liquidity requirements. Such changes could result in our management determining that some or all of such undistributed earnings are no longer indefinitely reinvested. In that event, we would be required to adjust our income tax provision in the period we determined that the earnings will no longer be indefinitely reinvested outside the relevant tax jurisdiction.

Share-based compensation

Prior to the consummation of the IPO, our employees were eligible to receive equity awards from the 2016 Plan (as defined below). Following the consummation of the IPO, employees are eligible to receive equity awards from the 2018 Equity Incentive Plan.

Effective February 3, 2016, Osmotica Holdings S.C.Sp. adopted the 2016 Equity Incentive Plan, or the 2016 Plan, under which, the Company's officers and key employees were granted options to purchase common units. The options awards were made up of two components: 50% of options granted were Time Awards, or Time Based Options, and 50% were Performance Awards, or Performance Based Options. The Time Based Options vested 25% annually from original grant date. The Performance Based Options were to vest immediately upon the achievement by the majority investors in the Company having received (on a cumulative basis) aggregate net proceeds exceeding certain return on investment targets. The Time Awards and Performance Awards contained a sales restriction in the form of a liquidity event and subsequent disposal of common units by the Major Limited Partners (as defined in the 2016 Plan) before the employee was able to sell vested and exercised common units and were required to remain employed to avoid Company's call option on such common units at a lower of cost or fair market value.

Prior to the Company's IPO on October 22, 2018, the Company amended the 2016 Plan effective upon the IPO. Under the amended 2016 Plan at the IPO, the Time Based Options and the Performance Based Options converted to options to purchase our ordinary shares on the same basis as common units of Osmotica Holdings S.C.Sp. were converted to ordinary shares, with corresponding adjustments to the exercise price and the number of the options as well as the removal of existing sales restriction. In connection with this modification, the Time Based Options continued to vest in accordance with their original vesting schedule while the Performance Based Options were converted into options which vest with the passage of time, in equal annual installments on the first four anniversaries of the IPO, subject to the continued employment on each vesting date.

In addition, prior to the IPO the Company adopted the 2018 Equity Incentive Plan, or the 2018 Plan effective upon the IPO. During 2018, the Company granted Time Based Options vesting in a single installment on the fourth anniversary of the Company's IPO, generally subject to the employee's continued employment on the vesting date. During 2020, the Company granted performance stock units ("PSUs") under its existing 2018 Incentive Plan (the "2018 Plan") to certain key employees of the Company that gives holders the potential to receive a certain number of earned PSUs at the end of a pre-determined term. Unless earlier terminated, forfeited, relinquished or expired, the earned PSUs will vest in full on the vesting date, subject to the grantee remaining in continuous employment from the date of grant through the vesting date. The PSUs will vest on the third and fifth anniversary of the grant date. The number of PSUs that become earned PSUs as of the end of the performance period shall be equal to the number of PSUs multiplied by the applicable percentage based on Stock Price Hurdle attainment, as set forth in the PSU Award Agreement and 2018 Plan.

We account for share-based compensation awards in accordance with the FASB Accounting Standards Codification, or ASC, Topic 718, *Compensation — Stock Compensation*, or ASC 718. ASC 718 requires service-based and equity settled share-based awards issued to employees to be recognized as expense based on their grant date fair values. We use the Black-Scholes option pricing model to value our share option awards and the Monte Carlo model to value our performance stock options. We account for forfeitures of share option awards as they occur in accordance with ASU No. 2016-09. For option and performance awards issued to employees, we recognize compensation expense on a graded vesting basis over the requisite service period, which is generally the vesting period of the award.

The conversion of the Performance Based Options to new Time Based Options upon IPO was accounted for as a modification under ASC 718 where the fair value of such awards determined on the modification date, or the IPO date will be recognized over their remaining vesting period.

Each award was approved by our directors at a per share exercise price not less than the per share fair value in effect as of that award date.

Estimating the fair value of options requires the input of subjective assumptions, including the estimated fair value of our ordinary shares, the exercise price, the expected option term, share price volatility, the risk-free interest rate and

expected dividends. The assumptions used in our Black-Scholes option-pricing model represent management's best estimates and involve a number of variables, uncertainties and assumptions and the application of management's judgment, as they are inherently subjective. If any assumptions change, our share-based compensation expense could be materially different in the future.

These assumptions used in our Black-Scholes option-pricing model are estimated as follows:

- *Expected Option Term*. Due to the lack of sufficient company-specific historical exercise data, the expected term of employee options is determined using the "simplified" method, as prescribed in SEC's Staff Accounting Bulletin (SAB), Topic 14.D.2, whereby the expected life equals the arithmetic average of the vesting term and the original contractual term of the option.

- *Expected Volatility*. Due to lack of a public market for the trading of our ordinary shares, the expected volatility is based on historical volatilities of similar entities within our industry which were commensurate with the expected term assumption as described in SAB 14.D.6.

- *Risk-Free Interest Rate*. The risk-free interest rate is based on the interest rate payable on U.S. Treasury securities in effect at the time of grant for a period that is commensurate with the assumed expected option term.

- *Expected Dividends*. The expected dividend yield is 0% because we have not historically paid, and do not expect for the foreseeable future to pay, a dividend on our ordinary shares.

Historically for all periods prior to the IPO, our board of directors has determined the fair value of the common unit underlying our options with assistance from management and based upon information available at the time of grant. Given the absence of a public trading market for our common units, estimating the fair value of our common units has required complex and subjective judgments and assumptions, including the most recent valuations of our common units based on the actual operational and financial performance, current business conditions and discounted cash flow projections. The estimated fair value of our common unit was adjusted for lack of marketability and control existing at the grant date.

For valuations after the consummation of the IPO, the board of directors determines the fair value of each share of underlying ordinary shares based on the closing price of our ordinary shares as reported on the date of grant.

During the years ended December 31, 2020 and 2019, we recognized $4.9 million and $4.9 million, respectively, of stock compensation expense.

Recently Issued Accounting Standards

For a discussion of recent accounting pronouncements, please see Note 2, *Summary of Significant Accounting Policies* to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to various market risks, which may result in potential losses arising from adverse changes in market rates, such as interest rates and foreign exchange rates. We do not enter into derivatives or other financial instruments for trading or speculative purposes and do not believe we are exposed to material market risk with respect to our cash and cash equivalents.

Through the operation of our subsidiaries based in Argentina and Hungary, we are exposed to foreign exchange rate risks. In addition to the operations of our foreign subsidiaries, we also contract with vendors that are located outside the United States, and in some cases make payments denominated in foreign currencies. We are subject to fluctuations in

foreign currency rates in connection with these arrangements. We do not currently hedge our foreign currency exchange rate risk. As of December 31, 2020, our liabilities denominated in foreign currencies were not material.

We are exposed to fluctuations in interest rates on our senior secured credit facilities. An increase in interest rates could have a material impact on our cash flow. As of December 31, 2020, a 100 basis point increase in assumed interest rates for our variable interest credit facilities would have an annual impact of approximately $2.2 million on interest expense.

As of December 31, 2020, we had cash and cash equivalents of $114.1 million. We do not engage in any hedging activities against changes in interest rates. Because of the short-term maturities of our cash and cash equivalents, we do not believe that an immediate 10% increase in interest rates would have a significant impact on the realized value of our investments.

Inflation generally affects us by increasing our cost of labor, API costs and costs of clinical trials. We do not believe that inflation had a material effect on our business, financial condition or results of operations during the years ended December 31, 2020 and 2019.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors of Osmotica Pharmaceuticals plc

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Osmotica Pharmaceuticals plc (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive loss, changes in shareholders' equity and cash flows for each of the two years in the period ended December 31, 2020, 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, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

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.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2019.

Iselin, New Jersey
March 30, 2021

OSMOTICA PHARMACEUTICALS PLC
Consolidated Balance Sheets
(In thousands, except share and per share data)

	December 31, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 114,053	$ 95,865
Trade accounts receivable, net	26,412	43,914
Inventories, net	17,934	21,305
Prepaid expenses and other current assets	14,755	11,546
Total current assets	173,154	172,630
Property, plant and equipment, net	28,054	30,238
Operating lease assets	2,755	4,983
Intangibles, net	65,758	153,986
Goodwill	100,855	100,855
Other non-current assets	373	563
Total assets	$ 370,949	$ 463,255
Liabilities and Shareholders' Equity		
Current liabilities:		
Trade accounts payable	$ 6,768	$ 8,495
Accrued liabilities	47,517	65,253
Current portion of obligation under finance leases	40	127
Current portion of lease liability	1,457	2,062
Income taxes payable - current portion	2	—
Total current liabilities	55,784	75,937
Long-term debt, net of non-current deferred financing costs	219,525	267,950
Long-term portion of obligation under finance leases	4	44
Long-term portion of lease liability	1,436	3,116
Deferred taxes	344	1,500
Total liabilities	277,093	348,547
Commitments and contingencies (See Note 14)		
Shareholders' equity:		
Ordinary shares ($0.01 nominal value 400,000,000 shares authorized, 62,545,832 and 51,845,742 shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively)	625	518
Preferred shares ($0.01 nominal value 40,000,000 shares authorized, no shares issued and outstanding)	—	—
Euro deferred shares (€1.00 nominal value 25,000 shares authorized, no shares issued and outstanding)	—	—
Additional paid in capital	548,070	489,440
Accumulated deficit	(452,610)	(373,021)
Accumulated other comprehensive loss	(2,229)	(2,229)
Total shareholders' equity	93,856	114,708
Total liabilities and shareholders' equity	$ 370,949	$ 463,255

See accompanying notes to consolidated financial statements.

OSMOTICA PHARMACEUTICALS PLC
Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except share and per share data)

	Year Ended December 31,	
	2020	2019
Net product sales	$ 145,850	$ 235,472
Royalty revenue	4,107	3,641
Licensing and contract revenue	27,927	918
Total revenues	177,884	240,031
Cost of goods sold (inclusive of amortization of intangibles)	74,480	111,630
Gross profit	103,404	128,401
Selling, general and administrative expenses	81,961	93,030
Research and development expenses	19,696	32,319
Impairment of intangibles	72,183	283,747
Total operating expenses	173,840	409,096
Operating loss	(70,436)	(280,695)
Interest expense and amortization of debt discount	14,396	18,211
Other non-operating gain	(546)	(884)
Total other non-operating expense	13,850	17,327
Loss before income taxes	(84,286)	(298,022)
Income tax benefit	4,697	27,121
Net loss	$ (79,589)	$ (270,901)
Other comprehensive loss, net		
Change in foreign currency translation adjustments	—	(383)
Comprehensive loss	$ (79,589)	$ (271,284)
Loss per share attributable to shareholders		
Basic and Diluted	$ (1.31)	$ (5.17)
Weighted average shares basic and diluted		
Basic and Diluted	60,652,999	52,367,444

See accompanying notes to consolidated financial statements.

OSMOTICA PHARMACEUTICALS PLC
Consolidated Statements of Changes in Shareholders' Equity/Partners' Capital
(In thousands, except share data)

	Ordinary shares		Additional paid in capital	Accumulated deficit	Accumulated other comprehensive loss	Total
	Shares	Amount				
Balance at January 1, 2019	52,518,924	$ 525	$ 487,288	$ (102,120)	$ (1,846)	$ 383,847
Repurchase of ordinary shares	(673,182)	(7)	(2,780)	—	—	(2,787)
Net loss	—	—	—	(270,901)	—	(270,901)
Share compensation	—	—	4,932	—	—	4,932
Change in foreign currency translation	—	—	—	—	(383)	(383)
Balance at December 31, 2019	51,845,742	$ 518	$ 489,440	$ (373,021)	$ (2,229)	$ 114,708
Proceeds from issuance of ordinary shares, net of offering costs	11,900,000	119	62,321	—	—	62,440
Repurchase of ordinary shares	(1,435,725)	(15)	(8,086)	—	—	(8,101)
Payments for taxes related to the net share settlement of equity awards	—	—	(749)	—	—	(749)
Net loss	—	—	—	(79,589)	—	(79,589)
Share compensation	235,815	3	5,144	—	—	5,147
Balance at December 31, 2020	62,545,832	$ 625	$ 548,070	$ (452,610)	$ (2,229)	$ 93,856

See accompanying notes to consolidated financial statements.

OSMOTICA PHARMACEUTICALS PLC
Consolidated Statements of Cash Flows
(In thousands)

	Year Ended December 31,	
	2020	**2019**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (79,589)	$ (270,901)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	21,026	57,015
Share compensation	4,925	4,932
Impairment of intangibles	72,183	283,747
Deferred income tax benefit	(1,156)	(26,794)
Loss on sale of fixed and leased assets	287	173
Bad debt provision	6	(164)
Amortization of deferred financing and loan origination fees	1,269	1,337
Write off of deferred financing fees in connection with prepayment	496	—
Change in operating assets and liabilities:		
Trade accounts receivable, net	17,496	12,674
Inventories, net	3,371	3,078
Prepaid expenses and other current assets	(3,209)	9,177
Trade accounts payable	(1,723)	(16,375)
Accrued and other current liabilities	(17,792)	(24,332)
Net cash provided by operating activities	17,590	33,567
CASH FLOWS FROM INVESTING ACTIVITIES:		
Proceeds from sale of fixed and leased assets	50	17
Payments on disposal of leased assets	(214)	(74)
Purchase of property, plant and equipment	(2,920)	(3,963)
Net cash used in investing activities	(3,084)	(4,020)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Payments on finance lease obligations	(127)	(130)
Proceeds from public offering, net of issuance costs	62,440	—
Proceeds from purchases of stock under ESPP	219	—
Debt repayment	(50,000)	—
Repurchases of ordinary shares	(8,101)	(2,787)
Payments for taxes related to net share settlement of equity awards	(749)	—
Proceeds from insurance financing loan	—	1,314
Repayment of insurance financing loan	—	(3,088)
Net cash provided by (used in) financing activities	3,682	(4,691)
Net change in cash and cash equivalents	18,188	24,856
Effect on cash of changes in exchange rate	—	175
Cash and cash equivalents, beginning of period	95,865	70,834
Cash and cash equivalents, end of period	$ 114,053	$ 95,865
Supplemental disclosure of cash and non-cash transactions:		
Cash paid for interest	$ 14,745	$ 15,181
Cash paid for taxes	$ 2,044	$ 1,290

See accompanying notes to consolidated financial statements.

OSMOTICA PHARMACEUTICALS PLC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Organization and Nature of Operations

Osmotica Pharmaceuticals plc, together with its subsidiaries, is a fully integrated biopharmaceutical company focused on the development and commercialization of specialty products that target markets with underserved patient populations. The Company generates revenues across an existing portfolio of promoted specialty neurology and women's health products, as well as non-promoted products, many of which are primarily complex formulations of generic drugs.

Osmotica Pharmaceuticals plc (formerly known as Lilydale Limited and Osmotica Pharmaceuticals Limited) is an Irish public limited company. Osmotica Holdings S.C.Sp. acquired Osmotica Pharmaceuticals plc on April 30, 2018 for the purpose of facilitating an offering of ordinary shares in an initial public offering. On October 22, 2018, Osmotica Pharmaceuticals plc completed its initial public offering (the "IPO"), in which it issued and allotted 7,647,500 ordinary shares at a public offering price of $7.00 per share. The number of shares issued in the IPO reflected the exercise in full of the underwriters' option to purchase 997,500 additional ordinary shares. In addition, the Company issued and allotted 2,014,285 ordinary shares at the public offering price in a private placement to investment funds affiliated with Avista Capital Partners, Altchem Limited and an entity controlled by the Company's Chief Financial Officer. The aggregate net proceeds from the IPO and the private placement were approximately $58.1 million after deducting underwriting discounts and commissions and estimated offering expenses.

Immediately prior to the IPO and prior to the commencement of trading of Osmotica Pharmaceuticals plc's ordinary shares on the Nasdaq Global Select Market, Osmotica Holdings S.C.Sp. undertook a series of restructuring transactions that resulted in Osmotica Pharmaceuticals plc becoming the direct parent of Osmotica Holdings S.C.Sp with each holder of common units of Osmotica Holdings S.C.Sp. receiving approximately 42.84 ordinary shares of Osmotica Pharmaceuticals plc in exchange for each such common unit. In addition, each holder of an option to purchase common units of Osmotica Holdings S.C.Sp. received an option to purchase the number of ordinary shares of Osmotica Pharmaceuticals plc determined by multiplying the number of units underlying such option by approximately 42.84 (rounded down to the nearest whole share) and dividing the exercise price per unit for such option by approximately 42.84 (rounded up to the nearest whole cent). These transactions are referred to as the "Reorganization". Accordingly, all share and share amounts for all periods presented in the accompanying financial statements have been adjusted retroactively, where applicable, to reflect the Reorganization.

Until the Reorganization on October 17, 2018, Osmotica Pharmaceuticals plc did not conduct any operations (other than activities incidental to its formation, the Reorganization and the pursuit of an initial public offering). Upon the completion of the Reorganization, the historical consolidated financial statements of Osmotica Holdings S.C.Sp. became the historical financial statements of Osmotica Pharmaceuticals plc. Accordingly, the accompanying consolidated financial statements included herein reflect the financial information of Osmotica Holdings S.C.Sp.

Osmotica Holdings S.C.Sp.is a Luxembourg special limited partnership, formed on January 28, 2016. Osmotica Holdings US LLC, a subsidiary of Osmotica Holdings S.C.Sp. entered into a fifty-fifty partnership (the "Merger"), effective February 3, 2016, pursuant to a definitive agreement between Vertical/Trigen Holdings, LLC ("Vertical/Trigen") and members, and Osmotica Holdings Corp Limited and Subsidiaries. Osmotica Holdings S.C.Sp. and several other holding companies and partnerships were formed as a result of the Merger. Pursuant to the Merger, Vertical/Trigen was deemed to be the accounting acquirer. Osmotica is a fully integrated biopharmaceutical company focused on the development and commercialization of specialty products that target markets with underserved patient populations.

Unless otherwise indicated or required by the context, references throughout to "Osmotica," or the "Company," refer to (i) prior to the completion of the Reorganization, Osmotica Holdings S.C.Sp. and its consolidated subsidiaries, including, from and after April 30, 2018, Osmotica Pharmaceuticals plc, and (ii) following the completion of the Reorganization, Osmotica Pharmaceuticals plc and its consolidated subsidiaries, including Osmotica Holdings S.C.Sp.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies

Significant Accounting Policies

Going Concern Evaluation

The Company devotes significant financial resources to the manufacture, marketing and commercialization of its approved products, and support of its research and development efforts. The Company's future operating performance depends on many assumptions, including assumptions with respect to product sales and expenses, commercialization costs, research and development expenses as well as other factors. These assumptions may prove to be wrong or other factors may adversely affect the Company's operating results. As a result, the Company's operating results may fluctuate significantly quarter to quarter or year to year. The Company expects its near term levels of profitability to be negatively affected by price competition on our generic products, and increased expenses associated with new product launches. As a result, it's possible it would not be able to comply with financial covenants in its credit agreement or generate sufficient cash to service its debt obligations.

The Company is currently undertaking a comprehensive review of strategic options to maximize shareholder value. The options under consideration include divestitures of non-stragetic assets, re-financings and commercialization or collaboration agreements. In the event the Company is unable to generate sufficient proceeds from these strategic options such that it can reduce, retire or refinance its existing debt, the Company believes it has sufficient plans to effectively manage its expenses and avail itself of cure provisions provided for in its credit agreement, in order to maintain compliance with its debt covenants therein. The use of the cure provisions will result in utilization cash to pay down the debt balance.

A significant portion of the Company's expense base is discretionary and the Company has the ability to reduce or defer spending to reduce expenses and improve profitability and cash flow to maintain compliance with its debt covenants. This could include, among other things, significant reductions in its general and administrative expenses, research and development expenses, including deferral of clinical trial programs, and deferrals of certain promotional and capital spending programs which could negatively impact the Company's revenue growth and plans. The Company has previously demonstrated an ability to implement various cost reduction initiatives. During the third quarter of 2019 and continuing into 2020, the Company reduced its field force by an aggregate of 90 positions, generating annualized savings of approximately $10 million, and took measures to realign its operating infrastructure to prepare for the launch of Upneeq and implemented other cost-savings measures to reduce its expenses.

Based on the current facts and circumstances, the use of the cure provisions provided for in the credit agreement, which will result in utilizing cash to prepay debt, and the Company's ability to implement spending reductions and program deferrals, we believe it is probable that the Company can effectively manage its spending to improve profitability in order to maintain compliance with the debt covenants and other obligations in our credit agreement for at least the next 12 months, even if the strategic review does not generate sufficient proceeds to reduce, retire or refinance our existing debt. As a result, the Company has concluded that, after consideration of management's plans it has sufficient liquidity to meet its obligations within one year after the issuance date of its Consolidated Financial Statements, and it does not have substantial doubt about its ability to continue as a going concern.

Basis of Presentation—The accompanying consolidated financial statements included herein have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Principles of Consolidation—The accompanying consolidated financial statements include the accounts of Osmotica Pharmaceuticals plc and its wholly-owned domestic and foreign subsidiaries. All inter-company transactions and balances have been eliminated in consolidation. The Company is not involved with variable interest entities.

Use of Estimates—The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures in the condensed consolidated financial statements and accompanying notes. Management bases it estimates

on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

Foreign Currency Translation—The financial position and results of operations of the Company's non-U.S. subsidiaries are generally determined using U.S. Dollars as the functional currency. Our subsidiary in Argentina is currently operating in a highly inflationary environment, as a result, we account for translation in accordance with US GAAP. Foreign currency transaction gains and losses are included in selling, general and administrative expenses in the Company's statements of operations.

Cash and Cash Equivalents—The Company considers all highly liquid investments with an original maturity date of three months or less to be cash equivalents.

Fair Value of Financial Instruments—The Company applies Accounting Standards Committee or ASC 820, *Fair Value Measurement* ("ASC 820"), which establishes a framework for measuring fair value and clarifies the definition of fair value within that framework. ASC 820 defines fair value as an exit price, which is the price that would be received for an asset or paid to transfer a liability in the Company's principal or most advantageous market in an orderly transaction between market participants on the measurement date. The fair value hierarchy established in ASC 820 generally requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Observable inputs reflect the assumptions that market participants would use in pricing the asset or liability and are developed based on market data obtained from sources independent of the reporting entity. Unobservable inputs reflect the entity's own assumptions based on market data and the entity's judgments about the assumptions that market participants would use in pricing the asset or liability and are to be developed based on the best information available in the circumstances.

The Company's financial instruments include cash and cash equivalents, accounts receivable, accounts payable and short and long-term debt. The fair values of these financial instruments approximate book value because of the short maturity of these instruments.

The valuation hierarchy is composed of three levels. The classification within the valuation hierarchy is based on the lowest level of input that is significant to the fair value measurement. The levels within the valuation hierarchy are described below:

Level 1 — Assets and liabilities with unadjusted, quoted prices listed on active market exchanges. Inputs to the fair value measurement are observable inputs, such as quoted prices in active markets for identical assets or liabilities.

Level 2 — Inputs to the fair value measurement are determined using prices for recently traded assets and liabilities with similar underlying terms, as well as direct or indirect observable inputs, such as interest rates and yield curves that are observable at commonly quoted intervals.

Level 3 — Inputs to the fair value measurement are unobservable inputs, such as estimates, assumptions, and valuation techniques when little or no market data exists for the assets or liabilities.

Inventories—Inventories are stated at the lower of cost or net realizable value at approximate costs determined on the first-in first-out basis. The Company maintains an allowance for excess and obsolete inventory as well as inventory where the cost is in excess of its net realizable value ("NRV") based on management's assessments. The Company capitalizes inventory costs associated with its products prior to regulatory approval when, based on management judgement, future commercialization is considered probable and future economic benefit is expected to be realized. As of December 31, 2020 and 2019, there were no capitalized inventory costs associated with products that had not yet achieved regulatory approval. The Company assesses the regulatory approval process and where the product stands in relation to that approval process including any known constraints or impediments to approval. The Company also considers the shelf life of the product in relation to the product timeline for approval. Sample inventory utilized for promoting the Company's products are expensed and included in cost of goods sold when the sample units are purchased or manufactured.

Property, Plant and Equipment—Property, plant and equipment is stated at cost, less accumulated depreciation. Maintenance and repairs are charged to expense when incurred. Additions and improvements that extend the economic useful life of the asset are capitalized and depreciated over the remaining useful lives of the assets. The cost and accumulated depreciation of assets sold or retired are removed from the respective accounts, and any resulting gain or loss is reflected in current earnings. Depreciation is provided using the straight-line method in amounts considered to be sufficient to amortize the cost of the assets to operations over their estimated useful lives or lease terms, as follows:

Asset category	Depreciable life
Buildings	20 - 30 years
Leasehold improvements	Lesser of the useful life of the improvement or the terms of the underlying lease
Machinery	3 - 15 years
Furniture, fixtures and equipment	3 - 10 years
Computer hardware and software	3 - 12 years

Long-Lived Assets, Including Definite-Lived Intangible Assets—Intangible assets are stated at cost less accumulated amortization. Amortization is generally recorded on a straight-line basis or based on the expected pattern of cash flows over estimated useful lives ranging from 5 to 20 years. The Company periodically reviews the estimated useful lives of intangible assets and makes adjustments when events indicate that a shorter life is appropriate.

Long-lived assets, other than goodwill and other indefinite-lived intangibles, are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable through the estimated undiscounted future cash flows derived from such assets.

Factors that the Company considers in deciding when to perform an impairment review include significant changes in the Company's forecasted projections for the asset or asset group for reasons including, but not limited to, significant under-performance of a product in relation to expectations, significant changes, or planned changes in the Company's use of the assets, significant negative industry or economic trends, and new or competing products that enter the marketplace. The impairment test is based on a comparison of the undiscounted cash flows expected to be generated from the use of the asset group. If impairment is indicated, the asset is written down by the amount by which the carrying value of the asset exceeds the related fair value of the asset with the related impairment charge recognized within the statements of operations.

The Company recorded impairment charges of $72.2 million and $283.7 million, in regard to definite-lived and indefinite-lived intangible assets for the years ended December 31, 2020 and 2019, respectively (see Note 7).

Goodwill and Indefinite Lived Intangible Assets—Goodwill, which represents the excess of purchase price over the fair value of net assets acquired, is carried at cost. Goodwill is not amortized; rather, it is subject to a periodic assessment for impairment by applying a fair value-based test. The Company is organized in one reporting unit and evaluates the goodwill for the Company as a whole. Goodwill is assessed for impairment on an annual basis as of October 1st of each year or more frequently if events or changes in circumstances indicate that the asset might be impaired. Under the authoritative guidance issued by the Financial Accounting Standards Board (the "FASB"), the Company has the option to first assess the qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform a quantitative goodwill impairment test. If the Company determines that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then the goodwill impairment test is performed. The goodwill impairment test requires the Company to estimate the fair value of the reporting unit and to compare the fair value of the reporting unit with its carrying amount. If the fair value exceeds the carrying value, then no impairment is recognized. If the carrying value recorded exceeds the fair value calculated, then an impairment charge is recognized for the difference. The judgments made in determining the projected cash flows used to estimate the fair value can materially impact the Company's

financial condition and results of operations. There was no impairment of goodwill for the year ended December 31, 2020 and 2019, respectively. (see Note 7).

In-Process Research and Development ("IPR&D") intangible assets represent the value assigned to acquired Research & Development ("R&D") projects that principally represent rights to develop and sell a product that the Company has acquired which have not yet been completed or approved. These assets are subject to impairment testing until completion or abandonment of each project. Impairment testing requires the development of significant estimates and assumptions involving the determination of estimated net cash flows for each year for each project or product (including net revenues, cost of sales, R&D costs, selling and marketing costs and other costs which may be allocated), the appropriate discount rate to select in order to measure the risk inherent in each future cash flow stream, the assessment of each asset's life cycle, the potential regulatory and commercial success risks, and competitive trends impacting each asset and related cash flow stream as well as other factors. The major risks and uncertainties associated with the timely and successful completion of the IPR&D projects include legal risk, market risk and regulatory risk. If applicable, upon abandonment of the IPR&D product, the assets are reduced to zero. IPR&D is assessed for impairment on an annual basis as of October 1st of each year or more frequently if events or changes in circumstances indicate that the asset might be impaired. If the fair value of the IPR&D is less than its carrying amount, an impairment is recognized for the difference. The Company recognized an impairment charge to IPR&D of $28.9 million for the year ended December 31, 2020 and we recognized no impairment charges of IPR&D for the year ended December 31, 2019 (see Note 7).

Product Sales—Revenue is recognized at the point in time when the Company's performance obligations with the applicable customers have been satisfied. At contract inception, the Company determines if the contract is within the scope of ASC Topic 606 and then evaluates the contract using the following five steps: (1) identify the contract with the customer; (2) identify the performance obligations; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations; and (5) recognize revenue at the point in time when the entity satisfies a performance obligation.

Revenue is recorded at the transaction price, which is the amount of consideration the Company expects to receive in exchange for transferring products to a customer. The Company considered the unit of account for each purchase order that contains more than one product. Because all products in a given purchase order are generally delivered at the same time and the method of revenue recognition is the same for each, there is no need to separate an individual order into separate performance obligations. The Company determines the transaction price based on fixed consideration in its contractual agreements, which includes estimates of variable consideration, and the transaction price is allocated entirely to the performance obligation to provide pharmaceutical products. In determining the transaction price, a significant financing component does not exist since the timing from when the Company delivers product to when the customers pay for the product is less than one year and the customers do not pay for product in advance of the transfer of the product.

The Company records product sales net of any variable consideration, which includes estimated chargebacks, certain commercial rebates, and discounts and allowances. The Company utilizes the expected value method to estimate all elements of variable consideration included in the transaction price. The variable consideration is recorded as a reduction of revenue at the time revenues are recognized. The Company will only recognize revenue to the extent that it is probable that a significant revenue reversal will not occur in a future period. These estimates may differ from actual consideration amount received and the Company will re-assess these estimates each reporting period to reflect known changes in factors.

Royalty Revenue—For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes revenue at the later of (a) when the related sales occur, or (b) when the performance obligation to which some or all the royalty has been allocated has been satisfied (or partially satisfied).

Licensing and Contract Revenue—The Company has arrangements with commercial partners that allow for the purchase of product from the Company by the commercial partners for purposes of sub-distribution. The Company recognizes revenue from an arrangement when control of such product is transferred to the commercial partner, which is typically upon delivery. In these situations, the performance obligation is satisfied when product is delivered to the Company's

commercial partner. Licensing revenue is recognized in the period in which the product subject to the sublicensing arrangement is sold by the Company to its commercial partner. Sales deductions, such as returns on product sales, government program rebates, price adjustments, and prompt pay discounts in regard to licensing revenue is generally the responsibility of the Company's commercial partners and not recorded by the Company.

The transfer of the license is a performance obligation satisfied at a point in time. For arrangements that include non-sales based milestones, including milestone payments based on regulatory approvals or other activities, and the license is deemed to be the predominant item to which the milestones relate, the Company recognizes revenue at the later of a) when the milestone activity is achieved, or b) when the performance obligation to which some or all the milestone has been allocated has been satisfied (or partially satisfied). For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes revenue at the later of (a) when the related sales occur, or (b) when the performance obligation to which some or all the royalty has been allocated has been satisfied (or partially satisfied).

Freight—The Company records amounts billed to customers for shipping and handling as revenue, and records shipping and handling expenses related to product sales as cost of goods sold. The Company accounts for shipping and handling activities related to contracts with customers as costs to fulfill the promise to transfer the associated products. When shipping and handling costs are incurred after a customer obtains control of the products, the Company also has elected to account for these as costs to fulfill the promise and not as a separate performance obligation.

Chargebacks—The Company enters into contractual agreements with certain third parties such as retailers, hospitals, and group-purchasing organizations ("GPOs") to sell certain products at predetermined prices. Similarly, the Company maintains an allowance for rebates and discounts related to chargebacks, wholesaler fees for service contracts, GPO administrative fees, government programs, prompt payment and other adjustments with certain customers. Most of the parties have elected to have these contracts administered through wholesalers that buy the product from the Company and subsequently sell it to these third parties. As noted elsewhere, these wholesalers represent a significant percentage of the Company's gross sales. When a wholesaler sells products to one of these third parties that are subject to a contractual price agreement, the difference between the price paid to the Company by the wholesaler and the price under the specific contract is charged back to the Company by the wholesaler. Utilizing this information, the Company estimates a chargeback percentage for each product and records an allowance as a reduction to gross sales when the Company records its sale of the products. The Company reduces the chargeback allowance when a chargeback request from a wholesaler is processed. The Company's provision for chargebacks is fully reserved for at the time when sales revenues are recognized.

The Company obtains product inventory reports from major wholesalers to aid in analyzing the reasonableness of the chargeback allowance and to monitor whether wholesaler inventory levels do not significantly exceed customer demand. The Company assesses the reasonableness of its chargeback allowance by applying a product chargeback percentage that is based on a combination of historical activity and current price and mix expectations to the quantities of inventory on hand at the wholesalers according to wholesaler inventory reports. In addition, the Company estimates the percentage of gross sales that were generated through direct and indirect sales channels and the percentage of contract vs. non-contract revenue in the period, as these each affect the estimated reserve calculation. In accordance with its accounting policy, the Company estimates the percentage amount of wholesaler inventory that will ultimately be sold to third parties that are subject to contractual price agreements based on a trend of such sales through wholesalers. The Company uses this percentage estimate until historical trends indicate that a revision should be made. On an ongoing basis, the Company evaluates its actual chargeback rate experience, and new trends are factored into its estimates each quarter as market conditions change.

The Company ensures that chargebacks are reasonable through review of contractual obligations, historical trends and evaluation of recent activity. Furthermore, other events that could materially alter chargebacks include: changes in product pricing as a result of competitive market dynamics or negotiations with customers, changes in demand for specific products due to external factors such as competitor supply position or consumer preferences, customer shifts in buying patterns from direct to indirect through wholesalers, which could either individually or in aggregate increase or decrease the chargebacks depending on the direction and trend of the change(s).

Commercial Rebates—The Company maintains an allowance for commercial rebates that it has in place with certain customers. Commercial rebates vary by product and by volume purchased by each eligible customer. The Company tracks sales by product number for each eligible customer and then applies the applicable commercial rebate percentage, using both historical trends and actual experience to estimate its commercial rebates. The Company reduces gross sales and increases the commercial rebates allowance by the estimated commercial rebates when the Company sells its products to eligible customers. The Company reduces the commercial rebate allowance when it processes a customer request for a rebate. At each month end, the Company analyzes the allowance for commercial rebates against actual rebates processed and makes necessary adjustments as appropriate. The Company's provision for commercial rebates is fully reserved for at the time when sales revenues are recognized.

The allowance for commercial rebates takes into consideration price adjustments which are credits issued to reflect increases or decreases in the invoice or contract prices of the Company's products. In the case of a price decrease, a credit is given for products remaining in customer's inventories at the time of the price reduction. Contractual price protection results in a similar credit when the invoice or contract prices of the Company's products increase, effectively allowing customers to purchase products at previous prices for a specified period of time. Amounts recorded for estimated shelf-stock adjustments and price protections are based upon specified terms with direct customers, estimated changes in market prices, and estimates of inventory held by customers. The Company regularly monitors these and other factors and evaluates the reserve as additional information becomes available. The Company ensures that commercial rebates are reasonable through review of contractual obligations, review of historical trends and evaluation of recent activity. Furthermore, other events that could materially alter commercial rebates include: changes in product pricing as a result of competitive market dynamics or negotiations with customers, changes in demand for specific products due to external factors such as competitor supply position or consumer preferences, customer shifts in buying patterns from direct to indirect through wholesalers, which could either individually or in aggregate increase or decrease the commercial rebates depending on the direction and velocity of the change(s).

Product Returns—Certain of the Company's products are sold with the customer having the right to return the product within specified periods. Estimated return accruals are made at the time of sale based upon historical experience. Historical factors such as one-time recall events as well as pending new developments like comparable product approvals or significant pricing movement that may impact the expected level of returns are taken into account monthly to determine the appropriate accrued expense. As part of the evaluation of the liability required, the Company considers actual returns to date that are in process, the expected impact of any product recalls and the amount of wholesaler's inventory to assess the magnitude of unconsumed product that may result in product returns to the Company in the future. The product returns level can be impacted by factors such as overall market demand and market competition and availability for substitute products which can increase or decrease the pull through for sales of the Company's products and ultimately impact the level of product returns. Product returns are fully reserved for at the time when sales revenues are recognized.

The Company ensures that product returns are reasonable through review of historical trends and evaluation of recent activity. Furthermore, other events that could materially alter product returns include: acquisitions and integration activities that consolidate dissimilar contract terms and could impact the return rate as typically the Company purchases smaller entities with less contracting power and integrates those product sales to Company contracts; and consumer demand shifts by products, which could either increase or decrease the product returns depending on the product or products specifically demanded and ultimately returned.

Accrual for Promotions and Co-Pay Discount Cards—From time to time the Company authorizes various retailers to run in-store promotional sales of its products. The Company accrues an estimate of the dollar amount expected to be owed back to the retailer. Additionally, the Company provides consumer co-pay discount cards, administered through outside agents to provide discounted products when redeemed. Upon release of the cards into the market, the Company records an estimate of the dollar value of co-pay discounts expected to be utilized taking into consideration historical experience.

Government Program Rebates—Federal law requires that a pharmaceutical distributor, as a condition of having federal funds being made available to the States for the manufacturer's drugs under Medicaid and Medicare Part B, must enter into a rebate agreement to pay rebates to state Medicaid programs for the distributor's covered outpatient drugs that are

dispensed to Medicaid beneficiaries and paid for by a state Medicaid program under a fee-for-service arrangement. The Centers for Medicare and Medicaid Services (“CMS”) are responsible for administering the Medicaid rebate agreements between the federal government and pharmaceutical manufacturers. Rebates are also due on the utilization of Medicaid managed care organizations (“MMCOs”).

The Company also pays rebates to managed care organizations (“MCOs”) for the reimbursement of a portion of the sales price of prescriptions filled that are covered by the respective plans. The liability for Medicaid, Medicare, and other government program rebates is settled in cash and is estimated at the time when sales revenues are recognized based on historical and current rebate redemption and utilization rates contractually submitted by each state’s program administrator and assumptions regarding future government program utilization for each product sold; and accordingly recorded as a reduction of product sales.

Business Combinations—The Company accounts for its business combinations under the provisions of ASC Topic 805, *Business Combinations* (“ASC 805”), which requires that the purchase method of accounting be used for all business combinations. Assets acquired, and liabilities assumed, are recorded at the date of acquisition at their respective fair values. Amounts allocated to acquire IPR&D are capitalized at the date of an acquisition and are not amortized. As products in development are approved for sale, amounts are allocated to product rights and licenses and amortized over their estimated useful lives. Definite-lived intangible assets are amortized over the expected life of the asset. Any excess of the purchase price over the estimated fair values of the net assets acquired is recorded as goodwill.

Goodwill represents the excess purchase price over the fair value of the tangible net assets and intangible assets acquired in a business combination. Acquisition-related expenses are recognized separately from business combinations and are expensed as incurred. If the business combination provides for contingent consideration, the Company records the contingent consideration at fair value at the acquisition date. Changes in fair value of contingent consideration resulting from events after the acquisition date, such as earn-outs, are recognized as follows: 1) if the contingent consideration is classified as equity, the contingent consideration is not re-measured and its subsequent settlement is accounted for within equity, or 2) if the contingent consideration is classified as a liability, the changes in fair value are recognized in earnings.

Purchases of developed products and licenses that are accounted for as an asset acquisition are capitalized as intangible assets and amortized over an estimated useful life. IPR&D assets acquired as part of an asset acquisition are expensed immediately if they have no alternative future uses.

In-Process Research and Development—In-process research and development represent the fair value assigned to incomplete research projects that the Company acquires through business combinations or developed internally which, at that time, have not reached technological feasibility. Intangible assets associated with IPR&D projects are not amortized until regulatory approval is obtained and product is launched, subject to certain specified conditions and management judgment. The useful life of an amortizing asset generally is determined by identifying the period in which substantially all of the cash flows are expected to be generated. During the years ended December 31, 2020 and 2019, $0 million and $19.7 million, respectively, of IPR&D was transferred to Product Rights as the products in development are approved for sale and placed into service (see Note 7). Such amounts will be amortized over their respectful estimated useful lives. At that time an evaluation of fair value was performed immediately prior to such transfer and no impairments were recognized at that time. Assets are subsequently evaluated for indicators of impairment.

Research and Development Costs—Research and development costs are expensed as incurred. These expenses include the costs of proprietary efforts, as well as costs incurred in connection with certain licensing arrangements. Upfront payments are recorded when incurred, and milestone payments are recorded when the specific milestone has been achieved.

Advertising—Advertising expense consists primarily of print media promotional materials. Advertising costs are expensed as incurred. Advertising expense for the years ended December 31, 2020 and 2019 amounted to $9.3 million and $8.5 million, respectively.

Share-based Compensation—The Company recognizes share-based compensation expense for all options and other arrangements within the scope of ASC 718, *Stock Compensation*. Share-based compensation expense is measured at the date of grant, based on the fair value of the award. Compensation for share-based awards with vesting conditions other than service are recognized at the time that those conditions will be achieved. Forfeitures are recognized as they are incurred.

Income Taxes—Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. Where applicable, the Company records a valuation allowance to reduce any deferred tax assets that it determines will not be realizable in the future.

The Company recognizes the benefit of an uncertain tax position that it has taken or expects to take on income tax returns it files if such tax position is more likely than not to be sustained on examination by the taxing authorities, based on the technical merits of the position. These tax benefits are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution.

Comprehensive income (loss)—Comprehensive income (loss) refers to revenues, expenses, gains and losses that under U.S. GAAP are included in comprehensive loss but are excluded from net loss as these amounts are recorded directly as an adjustment to accumulated other comprehensive income (loss). The Company's other comprehensive loss is comprised of foreign currency translation adjustments.

Basic and Diluted Loss per Share—Basic and diluted net loss per share is determined by dividing net loss by the weighted average ordinary shares outstanding during the period. For all periods presented with a net loss, the shares underlying the common share options have been excluded from the calculation because their effect would have been anti-dilutive. Therefore, the weighted average shares outstanding used to calculate both basic and diluted loss per share are the same for periods with a net loss.

Segment Reporting—The Company operates in one business segment which focuses on developing and commercializing pharmaceutical products that target markets with underserved patient populations. The chief operating decision maker ("CODM") reviews profit and loss information on a consolidated basis to assess performance and make overall operating decisions. The consolidated financial statements reflect the financial results of the Company's one reportable operating segment. The Company has no significant revenues or tangible assets outside of the United States.

Recently Adopted Accounting Standards

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which introduces a new methodology for accounting for credit losses on financial instruments, including available-for-sale debt securities. The guidance establishes a new "expected loss model" that requires entities to estimate current expected credit losses on financial instruments by using all practical and relevant information. The estimate of credit losses must be based on all relevant information including historical information, current conditions, and reasonable and supportable forecasts that affect the collectability of the amounts. The Company adopted this standard on January 1, 2020, and there was no material impact to the Company's consolidated financial statements. The Company has provided additional disclosures as required by the standard upon adoption. Refer to Note 4 for additional details.

Note 3. Revenues

The Company's performance obligations are to provide its pharmaceutical products based upon purchase orders from distributors. The performance obligation is satisfied at a point in time, typically upon delivery, when the customer obtains control of the pharmaceutical product. The Company invoices its customers after the products have been delivered and invoice payments are generally due within 30 to 60 days of invoice date.

The following table disaggregates revenue from contracts with customers by pharmaceutical products (in thousands):

Pharmaceutical Product	Year Ended December 31, 2020	2019
Venlafaxine ER (VERT)	$ 25,576	$ 75,601
Methylphenidate ER	31,699	73,205
Divigel	31,629	26,794
Nitrofurantoin	10,443	5,726
Lorzone	4,058	15,004
OB Complete	6,948	9,851
Other	35,497	29,291
Net product sales	145,850	235,472
Royalty revenue	4,107	3,641
License and contract revenue	27,927	918
Total revenues	$ 177,884	$ 240,031

When the Company receives consideration from a customer, or such consideration is unconditionally due from a customer prior to the transfer of products to the customer under the terms of a contract, the Company records a contract liability. The Company classifies contract liabilities as deferred revenue. The Company had no material deferred revenue as of December 31, 2020 and 2019. The Company has elected to apply the exemption under paragraph 606-10-50-14(a) related to remaining performance obligations as all open purchase orders are expected to be satisfied with a period of one year from the date of the purchase order.

Contract assets primarily relate to rights to consideration for goods or services transferred to the customer when the right is conditional on something other than the passage of time. Contract assets are transferred to accounts receivable when the rights become unconditional. The Company had no contract assets as of December 31, 2020 and 2019, respectively. The Company has no costs to obtain or fulfill contracts meeting the capitalization criteria under ASC Topic 340, *Other Assets and Deferred Costs.*

Note 4. Accounts Receivable, Sales and Allowances

The nature of the Company's business inherently involves, in the ordinary course, significant amounts and substantial volumes of transactions and estimates relating to allowances for product returns, chargebacks, rebates, doubtful accounts and discounts given to customers. This is typical of the pharmaceutical industry and not necessarily specific to the Company. Depending on the product, the end-user customer, the specific terms of national supply contracts and the particular arrangements with the Company's wholesale customers, certain rebates, chargebacks and other credits are deducted from the Company's accounts receivable. The process of claiming these deductions depends on wholesalers reporting to the Company the amount of deductions that were earned under the terms of the respective agreement with the end-user customer (which in turn depends on the specific end-user customer, each having its own pricing arrangement, which entitles it to a particular deduction). This process can lead to partial payments against outstanding invoices as the wholesalers take the claimed deductions at the time of payment.

Accounts receivable result primarily from sales of pharmaceutical products, amounts due under revenue sharing, license and royalty arrangements, which inherently involves, in the ordinary course of business, estimates relating to allowances for product returns, chargebacks, rebates, credit losses and discounts given to customers. Credit is extended based on the customer's financial condition, and, generally, collateral is not required. The Company ages its accounts receivable using the corresponding sale date of the transaction and considers accounts past due based on terms agreed upon in the transaction, which is generally 30 to 60 days for branded and generic sales, depending on the customer and the products purchased.

The Company is exposed to credit losses primarily through sales of its products. Prior to January 1, 2020, accounts receivable were recorded at cost less an allowance for doubtful accounts. Subsequent to January 1, 2020, accounts receivable are recorded at amortized cost less an allowance for expected credit losses that are not expected to be recovered. The Company's expected loss methodology for accounts receivable is developed using historical collection

experience, a review of the current status of customer's trade receivables, and current and future market conditions. Due to the short-term nature of such receivables, the estimate of accounts receivable that may not be collected is based on the aging of accounts receivable balances and the financial condition of customers. The Company's monitoring activities include timely account reconciliations, dispute resolution, payment confirmation, consideration of customers' financial condition and macroeconomic conditions. Balances are written-off when determined to be uncollectible. The Company considered the current and expected future economic and market conditions surrounding a novel strain of the coronavirus, referred to as 2019-ncov, COVID-19 coronavirus epidemic, or COVID-19, and determined that the estimate of credit losses was not significantly impacted.

With the exception of the allowance for credit losses, which is reflected as part of selling, general and administrative expense, the provisions for the following customer reserves are reflected as a reduction of revenues in the accompanying Consolidated Statements of Operations and Comprehensive Loss.

Trade accounts receivable, net consists of the following (in thousands):

	December 31, 2020	December 31, 2019
Gross trade accounts receivable		
Trade accounts receivable	$ 38,546	$ 70,958
Royalty accounts receivable	1,267	702
Other receivable	4,639	2,186
Less reserves for:		
Chargebacks	(9,921)	(14,624)
Commercial rebates	(7,344)	(13,579)
Discounts and allowances	(775)	(1,591)
Allowance for credit losses	—	(138)
Total trade accounts receivable, net	$ 26,412	$ 43,914

For the years ended December 31, 2020 and 2019, the Company recorded the following adjustments to gross product sales (in thousands):

	Year Ended December 31,	
	2020	2019
Gross product sales	$ 321,493	$ 764,267
Less provisions for:		
Chargebacks	(122,592)	(345,366)
Government and managed care rebates	(18,211)	(20,092)
Commercial rebates	(22,488)	(147,173)
Product returns	(2,825)	3,932
Discounts and allowances	(7,003)	(15,719)
Advertising and promotions	(2,524)	(4,377)
Net product sales	$ 145,850	$ 235,472

For the years ended December 31, 2020 and 2019, the activity in the Company's allowance for customer deductions against trade accounts receivable is as follows (in thousands):

	Chargebacks	Commercial Rebates	Discounts and Allowances	Credit Losses	Total
Balance at December 31, 2018	$ 38,861	$ 49,232	$ 3,510	$ 194	$ 91,797
Provision	345,366	147,173	15,719	(190)	508,068
Charges processed	(369,603)	(182,826)	(17,638)	134	(569,933)
Balance at December 31, 2019	$ 14,624	$ 13,579	$ 1,591	$ 138	$ 29,932
Provision	122,592	22,488	7,003	6	152,089
Charges processed	(127,295)	(28,723)	(7,819)	(144)	(163,981)
Balance at December 31, 2020	$ 9,921	$ 7,344	$ 775	$ —	$ 18,040

The annual activity in the Company's accrued liabilities for customer deductions by account for the years ended December 31, 2020 and 2019, is as follows (in thousands):

	Product Returns	Government and Managed Care Rebates	Total
Balance at December 31, 2018	$ 48,464	$ 9,981	$ 58,445
Provision	(3,932)	20,092	16,160
Charges processed	(11,075)	(25,206)	(36,281)
Balance at December 31, 2019	$ 33,457	$ 4,867	$ 38,324
Provision	2,825	18,211	21,036
Charges processed	(14,256)	(19,633)	(33,889)
Balance at December 31, 2020	$ 22,026	$ 3,445	$ 25,471

Provisions and utilizations of provisions activity in the current period which relate to the prior period revenues are not provided because to do so would be impracticable. The Company's current systems and processes do not capture the chargeback and rebate settlements by the period in which the original sales transaction was recorded. The Company uses a combination of factors and applications to estimate the dollar amount of reserves for chargebacks and rebates at each month end. Variable consideration is included in the transaction price only to the extent a significant reversal in the amount of cumulative revenue recognized is not probable of occurring when the uncertainty associated with the variable consideration is subsequently resolved. The Company regularly monitors the reserves based on an analysis of the Company's product sales and most recent claims, wholesaler inventory, current pricing, and anticipated future pricing changes. If amounts are different from the estimate due to changes from estimated rates, accrual rate adjustments are considered prospectively when determining provisions in accordance with authoritative U.S. GAAP. During the year ended December 31, 2020 and 2019, adjustments due to changes in estimates were necessary based on actual product returns experience, resulting in a decrease of $7.1 million and $25.3 million, respectively, to the product returns reserve and a corresponding benefit to the net product sales recognized.

Note 5. Inventories

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

	December 31, 2020	December 31, 2019
Finished goods	$ 13,352	$ 15,319
Work in process	618	778
Raw materials and supplies	3,964	5,208
	$ 17,934	$ 21,305

The Company maintains an allowance for excess and obsolete inventory, as well as inventory where its cost is in excess of its net realizable value. The activity in the allowance for excess and obsolete inventory account for the years ended December 31, 2020 and 2019, was as follows (in thousands):

	Year Ended	
	December 31, 2020	December 31, 2019
Balance at beginning of period	$ 1,069	$ 1,561
Provision	1,001	2,322
Charges processed	(1,144)	(2,814)
Balance at end of period	$ 926	$ 1,069

Note 6. Property, Plant and Equipment, Net

Property, plant and equipment consist of the following (in thousands):

	Year Ended	
	December 31, 2020	December 31, 2019
Land	$ 2,120	$ 2,120
Buildings	11,671	11,643
Leasehold improvements	3,580	3,423
Machinery	17,399	16,034
Furniture, fixtures and equipment	1,368	1,388
Computer hardware and software	9,014	8,508
	45,152	43,116
Accumulated depreciation	(18,980)	(14,292)
	26,172	28,824
Construction in progress	1,882	1,414
	$ 28,054	$ 30,238

Depreciation expense was $5.0 million and $4.4 million for the years ended December 31, 2020 and 2019, respectively. There is approximately $2.8 million of remaining construction in progress expenditures to substantially complete the projects.

Note 7. Goodwill and Other Intangible Assets

The Company tests goodwill and indefinite-lived intangible assets for impairment annually as of October 1st, or more frequently whenever events or changes in circumstances indicate that the asset might be impaired. Goodwill is net of accumulated impairment charges of $86.3 million at December 31, 2020 and 2019. The following table sets forth the carrying value of goodwill as of December 31, 2019 and 2020, respectively (in thousands).

	Goodwill
January 1, 2019	$ 100,855
Impairments	—
December 31, 2019	$ 100,855
Impairments	—
December 31, 2020	$ 100,855

The following tables sets forth the major categories of the Company's intangible assets and the weighted-average remaining amortization period as of December 31, 2020 and 2019, for those assets that are not already fully amortized (in thousands):

	December 31, 2020				
	Gross Carrying Amount	Accumulated Amortization	Impairment	Net Carrying Amount	Weighted Average Remaining Amortization Period (Years)
Distribution Rights	$ 33,714	$ (23,893)	$ (9,461)	$ 360	0.8
Product Rights	202,567	(164,336)	(19,539)	18,692	2.1
Tradenames	13,485	(3,741)	—	9,744	14.0
Developed Technology	52,466	(36,321)	(14,273)	1,872	8.6
IPR&D	64,000	—	(28,910)	35,090	Indefinite Lived
	$ 366,232	$ (228,291)	$ (72,183)	$ 65,758	

The table above is inclusive of a gross carrying amount of $85.9 million and $62.1 million of accumulated amortization for assets that have been fully impaired.

	December 31, 2019				
	Gross Carrying Amount	Accumulated Amortization	Impairment	Net Carrying Amount	Weighted Average Remaining Amortization Period (Years)
Distribution Rights	$ 98,433	$ (22,291)	$ (64,719)	$ 11,423	10.1
Product Rights	348,600	(152,348)	(146,033)	50,219	3.1
Tradenames	13,485	(3,035)	—	10,450	15.0
Developed Technology	125,461	(34,572)	(72,995)	17,894	10.9
IPR&D	64,000	—	—	64,000	Indefinite Lived
	$ 649,979	$ (212,246)	$ (283,747)	$ 153,986	

The table above is inclusive of a gross carrying amount of $28.3 million and $10.4 million of accumulated amortization for assets that have been fully impaired.

Changes in intangible assets during the years ended December 31, 2019 and 2020, were as follows (in thousands):

	Distribution Rights	Product Rights	Tradenames	Developed Technology	IPR&D	Total
January 1, 2019	$ 81,204	$ 217,473	$ 11,156	$ 96,857	$ 83,700	$ 490,390
Amortization	(5,062)	(40,921)	(706)	(5,968)	—	(52,657)
Impairments	(64,719)	(146,033)	—	(72,995)	—	(283,747)
Reclassifications(A)	—	19,700	—	—	(19,700)	—
December 31, 2019	$ 11,423	$ 50,219	$ 10,450	$ 17,894	$ 64,000	$ 153,986
Amortization	(1,602)	(11,988)	(706)	(1,749)	—	(16,045)
Impairments	(9,461)	(19,539)	—	(14,273)	(28,910)	(72,183)
December 31, 2020	$ 360	$ 18,692	$ 9,744	$ 1,872	$ 35,090	$ 65,758

(A) IPR&D in the amount of $19.7 million related to Osmolex ER was reclassified to Product Rights in the first quarter of 2019 when the product was launched. Osmolex ER was fully impaired during the second quarter of 2019.

As part of the Company's goodwill and intangible asset impairment assessments performed on the annual assessment date, when indicators of impairment are identified and when IPR&D assets are put into service, when a qualitative assessment is performed, the Company estimates the fair values of the intangible assets using an income approach that utilizes a discounted cash flow model, or, where appropriate, a market approach. The discounted cash flow models are dependent upon our estimates of future cash flows and other factors. These estimates of future cash flows involve

assumptions concerning (i) future operating performance, including future sales, long-term growth rates, operating margins, variations in the amounts, allocation and timing of cash flows and the probability of achieving the estimated cash flows and (ii) future economic conditions. These assumptions are based on significant inputs not observable in the market and thus represent Level 3 measurements within the fair value hierarchy. As of October 1, 2020, the Company performed a qualitative assessment for goodwill and for the IPR&D assets and concluded that the assets were not impaired. The discount rates applied to the estimated cash flows for the Company's 2019 annual goodwill and indefinite-lived intangible assets impairment test was 16.5%, based on the overall risk associated with the particular assets and other market factors. Indefinite-lived intangible assets classified as in-process research and development, or IPRD, are subject to adjustments reducing their anticipated revenues and costs by a probability of success, or POS, factor based upon empirical research of probabilities a new drug candidate would be approved based on the candidate's stage of clinical development. The POS factor applied to the IPRD asset on a subsequent assessment as of December 31, 2020 was 69.6% and the discount rate was 9.5%. The Company believes the discount rates and other inputs and assumptions are consistent with those that a market participant would use. Impairment charges resulting from annual or interim goodwill and intangible asset impairment assessments, if any, are recorded to Impairment of intangible assets in the Consolidated Statements of Operations and Comprehensive Loss.

Impairments of intangible assets and goodwill for the year-ended December 31, 2020 was $72.2 million primarily consisting of write-downs to fair value for methylphenidate ER, VERT and Oxybutynin of $19.5 million, $20.2 million and $3.6 million, respectively, including an indefinite-lived In-Process R&D asset, arbaclofen ER, which resulted in an impairment charge of $28.9 million due to a delay in the anticipated commercialization date of the product, if approved. These impairments reflect the competitive generic environment which has continued to erode net realized pricing and volumes of these products. In the fourth quarter of 2020 we recognized an impairment of finite-lived development technology and product rights for VERT of $10.7 million and $9.5 million, respectively due to the approval of a competing product and the anticipated deterioration of pricing and volumes.

During 2019, we recognized impairments of finite-lived intangible assets of $283.7 million, consisting primarily of write-downs to fair value of methylphenidate ER, VERT, Osmolex ER, and Corvite of $128.1 million, $137.7 million, $17.7 million, and $0.2 million, respectively. Methylphenidate ER tablets and VERT were impaired due to lower revenues reflecting an increasingly competitive environment which deteriorated pricing and volumes; Osmolex ER was impaired due to underperforming revenue expectations subsequent to the launch of the product; and Corvite due to the discontinuation of the product. In the third and fourth quarter of 2019 we also recognized an impairment of finite-lived development technology and distribution rights for VERT of $73.0 million and $64.7 million, respectively, due to approvals of competing products which deteriorated pricing and volumes.

Amortization expense was $16.0 million and $52.7 million for the years ended December 31, 2020 and 2019, respectively and is recorded to Cost of goods sold (inclusive of amortization of intangibles) in the Consolidated Statements of Operations and Comprehensive Loss.

The amortization expense of acquired intangible assets for each of the following five years are expected to be as follows (in thousands):

Years ending December 31	Amortization Expense
2021	$ 10,193
2022	5,625
2023	4,739
2024	2,790
Thereafter	7,321
Total	$ 30,668

Note 8. Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	December 31, 2020	December 31, 2019
Accrued product returns	$ 22,026	$ 33,457
Accrued royalties	2,246	3,649
Accrued compensation	8,022	10,998
Accrued government and managed care rebates	3,445	4,867
Accrued research and development	1,000	3,028
Accrued expenses and other liabilities	10,550	8,477
Customer coupons	200	777
Deferred revenue	28	—
Total	$ 47,517	$ 65,253

In the ordinary course of business, the Company enters into contractual agreements with wholesalers pursuant to which the wholesalers distribute sales of Company products to customers and provide sales data to the Company. In return the wholesalers charge the Company a fee for services and other customary rebates and chargebacks based on distribution sales of Company products through the wholesalers and downstream customers.

Note 9. Leases

The Company leases office space in Bridgewater, New Jersey for its principal offices under two non-cancelable leases that expire in July 2022 and November 2023, in addition to office and warehouse space in various domestic and international locations. The Company also leases certain vehicles under operating leases. As of December 31, 2020, the Company's operating leases had remaining lease terms ranging from 0.99 years to 3.00 years.

We assess whether an arrangement is a lease or contains a lease at inception. For arrangements considered leases or that contain a lease that is accounted for separately, we determine the classification and initial measurement of the right-of-use asset and lease liability at the lease commencement date, which is the date that the underlying asset becomes available for use. The Company has elected to account for non-lease components associated with our leases and lease components as a single lease component.

The Company recognizes a right-of use asset, which represents the Company's right to use the underlying asset for the lease term, and a lease liability, which represents the present value of the Company's obligation to make payments arising over the lease term. The present value of the lease payments are calculated using either the implicit interest rate in the lease or an incremental borrowing rate.

Our lease assets and liabilities were classified as follows on our Condensed Consolidated Balance Sheet at December 31, 2020 (in thousands):

Leases	Classification	Balance at December 31, 2020	Balance at December 31, 2019
Assets			
Operating	Operating Lease Assets	$ 2,755	$ 4,983
Finance	Property, plant and equipment, net	58	188
Total leased assets		$ 2,813	$ 5,171
Liabilities			
Current			
Operating	Current portion of lease liability	$ 1,457	$ 2,062
Finance	Current portion of obligations under finance leases	40	127
Non-current			
Operating	Long-term portion of lease liability	1,436	3,116
Finance	Long-term portion of obligations under finance leases	4	44
Total lease liabilities		$ 2,937	$ 5,349

The Company recognizes lease expense on a straight-line basis over the lease term. The components of lease cost are as follows (in thousands):

Lease Cost	Classification	Year Ended December 31, 2020	Year Ended December 31, 2019
Operating lease cost	SG&A expenses	$ 1,525	$ 1,926
	R&D expenses	104	139
	Cost of goods sold	392	366
Finance lease cost			
Amortization of leased assets	Depreciation and amortization	130	130
Interest on lease liabilities	Interest expense	2	4
Total lease cost		$ 2,153	$ 2,565

The table below shows the future minimum rental payments, exclusive of taxes, insurance and other costs, under the leases as follows (in thousands):

Years ending December 31	Operating Leases
2021	$ 1,589
2022	955
2023	554
Total lease payments	3,098
Less: interest	207
Present value of lease payments	$ 2,891

The Company has future minimum lease payments required under the finance leases of less than $0.1 million less interest expense of less than $0.1 million for total present value lease payments of less than $0.1 million for the years ended December 31, 2021 through December 31, 2022.

The weighted-average remaining lease term and the weighted-average discount rate of our leases were as follows (in thousands):

Lease Term and Discount Rate	December 31, 2020	December 31, 2019
Weighted average remaining lease term (years)		
Operating leases	2.24	2.86
Finance leases	1.47	1.33
Weighted average discount rate		
Operating leases	5.60 %	5.26 %
Finance leases	1.99 %	1.81 %

Other Information	December 31, 2020	December 31, 2019
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows for operating leases	$ (1,927)	$ (2,431)
Operating cash flows for finance leases	(2)	(4)
Financing cash flows for finance leases	(127)	(130)

For the years ended December 31, 2020 and 2019, the Company recorded $0.2 million and $1.4 million, respectively, of leased assets obtained in exchange for new operating lease liabilities and $0.0 million and less than $0.1 million, respectively, of leased assets obtained in exchange for new finance lease liabilities. During the years ended December 31, 2020 and 2019, the Company disposed of $0.6 million and $0.4 million, respectively, of leased assets.

Note 10. Financing Arrangements

The composition of the Company’s debt and financing obligations are as follows (in thousands):

	December 31, 2020	December 31, 2019
CIT Bank, N.A. Term Loan due December 21, 2022, net of deferred financing costs of $1.8 million and $3.4 million as of December 31, 2020 and December 31, 2019, respectively	$ 219,525	$ 267,950
Total debt	219,525	267,950
Less: current portion	—	—
Long-term debt	$ 219,525	$ 267,950

Term Loan

Concurrent with the closing of the Company's acquisition of Osmotica Holdings Corp Limited, the Company entered into a $160.0 million Term Loan (the "Term Loan") pursuant to a Credit Agreement dated February 3, 2016 (as amended, supplemented or otherwise modified, the "Term Loan Agreement") between the Company as borrower, certain other lenders and CIT Bank, N.A. ("CIT Bank") acting as administrative agent. The Term Loan is secured by certain assets of the Company, excluding certain intangibles and foreign property.

The Term Loan Agreement required quarterly principal repayments equal to 0.625% of the initial aggregate Term Loan amount beginning on the last day of the first full fiscal quarter following the closing of the Term Loan Agreement, with final payment of the remaining principal balance due at maturity six years from the date of closing of the Term Loan Agreement. At the Company's election, interest accrues on a Prime Rate/Federal Funds Effective Rate ("ABR Loan") or a LIBOR ("LIBOR Loan") rate, plus a margin of 4.00% for ABR Loan, and 5.00% for LIBOR Loan.

On November 10, 2016, the Company amended the Term Loan Agreement (the "First Amendment to the Term Loan Agreement") in conjunction with the reacquisition of venlafaxine distribution rights. Pursuant to the First Amendment to

the Term Loan Agreement, CIT Bank and certain other lenders agreed to make available to the Company, an Incremental Term Loan in the aggregate principal amount of $117,500,000, which was added to the Term Loan; there were no other modifications to the Term Loan Agreement.

On April 28, 2017, the Company amended the Term Loan Agreement (the "Second Amendment to the Term Loan Agreement"), in which the due date of the Company's annual financial statements was modified for the first fiscal year after the closing of the Second Amendment to Term Loan Agreement.

On December 21, 2017, the Company amended the Term Loan Agreement (the "Third Amendment to the Term Loan Agreement"). Pursuant to the Third Amendment to the Term Loan Agreement, CIT Bank and certain other lenders agreed to increase the principal amount of the Term Loan to an aggregate principal amount of $327,500,000. Of the aggregate principal amount, $277,500,000 was designated as the Term A Loan and $50,000,000 was designated as the Term B Loan.

On December 11, 2020, the Company amended the Term Loan Agreement (the "Fourth Amendment to the Term Loan Agreement"). Pursuant to the Fourth Amendment to the Term Loan Agreement, the Term Loan Agreement was amended to, among other things, remove a limit on the exercise of the Company’s right to cure a breach of the financial covenant under the Term Loan Agreement and providing that any proceeds received by the company as a result of the exercise of such cure right will be applied to repay term loans under the Term Loan Agreement.

The Term Loan Agreement requires quarterly principal repayments to 0.6925% of the original principal amount of the Term A Loan and in the case of the Term B Loan 0.25% of the original principal amount of the Term B Loan, with final payment of the remaining principal balance due at maturity five years from the date of closing of the Term Loan Agreement.

At the Company's election, for the Term A Loan, interest accrues on a Prime Rate/Federal Funds Effective Rate ("ABR Loan") or a LIBOR ("LIBOR Loan") rate in which the applicable rate per annum set forth below under the caption "ABR Spread" or "LIBOR Rate Spread," based upon the Total Leverage Ratio (as defined in the Term Loan Agreement) as of last day of the most recently ended fiscal quarter is as follows:

Total Leverage Ratio	LIBOR Rate Margin	ABR Margin
Category 1 Greater than 2.00 to 1.00	3.75 %	2.75 %
Category 2 Equal to or less than 2.00 to 1.00	3.25 %	2.25 %

For Term B Loan, interest accrues with respect to any ABR Loan, 3.25% per annum, and with respect to any LIBOR Rate Loan, 4.25% per annum. As of December 31, 2020 and 2019, the interest rates were 4.75% and 5.79% for Term A Loan and 5.25% and 6.29% for Term B Loan, respectively.

The Term Loan Agreement contains covenants that require the Company to deliver quarterly and annual financial statements along with certain supplementary financial information and schedules and ratios. The Term Loan Agreement also contains covenants that limit the ability of the Company to, among other things: incur additional indebtedness; incur liens; make investments; make payments on indebtedness; dispose of assets; enter into merger transactions; and make distributions. In addition, the Company shall not permit the total leverage ratio to be greater than 4.75:1.00 until March 31, 2020 at which time the total leverage ratio remains constant at a required 4.50:1.00. The total leverage ratio is the ratio, as of any date of determination, of (a) consolidated total debt, net of unrestricted cash and cash equivalents as of such date to (b) consolidated adjusted earnings before income taxes, depreciation and amortization ("Consolidated EBITDA") for the test period then most recently ended for which financial statements have been delivered. Also, the Company will not permit the fixed charge coverage ratio to fall below 1.25:1.0 beginning on March 31, 2018 through the final maturity date. The fixed charge coverage ratio, as of the date of determination, is the ratio of (x) Consolidated EBITDA net of capital expenditures and cash taxes paid to (y) interest payments, scheduled principal payments, restricted payments and management fees paid to related parties. The Company obtained a waiver from CIT Bank in regard to its non-compliance of its covenant to deliver annual financial statements by April 2, 2018. The Company did

not incur a waiver fee as a condition to the waiver. The Company was in compliance with all covenants of the Term Loan Agreement as of December 31, 2020 and 2019.

As a result, of payments made in 2018, as of both December 31, 2020 and 2019, there are no remaining scheduled installments of principal due in respect of the Term Loans until the final maturity date.

During the year ended December 31, 2020, the Company prepaid $50.0 million in aggregate of the outstanding principal amount. The prepayments consisted of $42.3 million of Term A Loan outstanding principal and $7.7 million of Term B Loan outstanding principal. As required by the Third Amendment, the prepayments were made on a pro rata basis between the Term A Loan and the Term B Loan. The Company intends to continue to make interest payments accrued on the outstanding remaining balance through the date of maturity.

In accordance with ASC 470, when debt is prepaid within its contractual terms and the terms of the remaining debt are not modified, the prepayment should be treated as a partial extinguishment rather than a modification. This conclusion is reached without regard to consideration of the 10% cash flow test since no change to terms of the original debt instrument was modified in connection with the prepayment. The Third Agreement allows for partial prepayments without creating changes to the terms of Term Loan A or Term Loan B.

The Company incurred debt issuance costs associated with the Third Amendment. Pursuant to ASC 835-30-35-2, with respect to a note for which the imputation of interest is required, the difference between the present value and the face amount shall be treated as a discount or premium and amortized as interest expense or income over the life of the note in such a way as to result in a constant rate of interest when applied to the amount outstanding at the beginning of any given period. As such, in accordance with ASC 835-30-35-2, the Company deferred and amortized the debt issuance costs amortized over the length of the Term Loan using the effective interest method.

As a result of the partial extinguishment, the Company has elected, as an accounting policy in accordance with ASC 470-50-40-2, to write off a proportionate amount of the unamortized fees at the time that the financing was partially settled in accordance with the terms of the Third Amendment. The unamortized debt issuance costs are allocated between the remaining original loan balance and the portion of the loan paid down on a pro-rata basis. The Company wrote off $0.5 million in debt issuance costs relating to the prepayment which occurred during the year ended December 31, 2020, and recorded the expense in the accompanying Consolidated Statement of Operations and Comprehensive Loss.

Revolving Facility

Concurrent with the closing of the Company's acquisition of Osmotica Holdings Corp Limited, the Company entered into a Revolving Facility in an aggregate amount of $30.0 million (the "Revolving Facility") pursuant to a Credit Agreement dated February 3, 2016 between the Company as borrower, certain other lenders and CIT Bank, N.A. ("CIT Bank") acting as administrative agent, as discussed above. The Company incurred closing costs associated with the Revolving Facility in the amount of $1.1 million, which were deferred and amortized over the length of the Revolving Facility on a straight-line basis.

On December 21, 2017, the Company amended the Revolving Facility (the "Amended Revolving Facility"). Pursuant to the Amended Revolving Facility, CIT Bank and certain other lenders agreed to increase the revolving credit commitments up to $50.0 million. The Company accounted for the Amended Revolving Facility as a modification of debt in accordance with ASC 470-50, Debt — Modifications and Extinguishments and ASU 2015-15, Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line of Credit Arrangements. Lender fees incurred in the amount of $0.4 million were deferred and are amortized over the length of the Amended Revolving Facility on a straight-line basis.

The total amount available under the Revolving Facility includes a Swingline Loan and Letter of Credit subfacility, respectively, in an aggregate principal amount at any time outstanding not to exceed the lesser of (x) in the case of each of the Swingline Loan and Letter of Credit, $5.0 million and (y) the total revolving commitment, based on certain terms and conditions of the Credit Agreement.

The Company will be required to repay the Revolving Facility upon its expiration five years from issuance, subject to permitted extension, and will pay interest on the outstanding balance monthly based, at the Company's election, on an adjusted prime/federal funds rate ("ABR") or an adjusted LIBOR ("LIBOR"), in which the applicable rate per annum set forth below under the caption "ABR Spread" or "LIBOR Rate Spread," based upon the Total Leverage Ratio (as defined in the Credit Agreement) as of last day of the most recently ended fiscal quarter. Additionally, the Company will pay a Commitment Fee based on the average daily unused revolving credit commitment. The LIBOR Rate Margin, the ABR Margin and Commitment Fee are as follows:

Total Leverage Ratio	LIBOR Rate Margin	ABR Margin	Commitment Fee
Category 1	3.75 %	2.75 %	0.50 %
Greater than 2.00 to 1.00			
Category 2	3.25 %	2.25 %	0.38 %
Equal to or less than 2.00 to 1.00			

At December 31, 2020 and 2019, there were no outstanding borrowings or outstanding letters of credit. Availability under the Revolving Facility as of December 31, 2020, was $50.0 million.

Aggregated cumulative maturities of long-term obligations (including the incremental and existing Term Loan and the Revolving Facility), excluding deferred financing costs of $1.8 million, as of December 31, 2020 were (in thousands):

Years ending December 31,	Maturities of Long-term Obligations
2021	$ —
2022	219,525
Total	$ 219,525

Note 11. Concentrations and Credit Risk

For the years ended December 31, 2020 and 2019, a significant portion of the Company’s gross product sales reported were through three customers, and a significant portion of the Company’s accounts receivable as of December 31, 2020 and 2019 were due from these customers as well. The following table sets forth the percentage of the Company’s gross sales and accounts receivable attributable to these customers for the periods indicated:

	Gross Product Sales Year Ended December 31,	
	2020	2019
Amerisource Bergen	31 %	12 %
Cardinal Health	20 %	47 %
McKesson	43 %	38 %
Combined Total	94 %	97 %

	Gross Account Receivables	
	December 31, 2020	December 31, 2019
Amerisource Bergen	21 %	21 %
Cardinal Health	20 %	22 %
McKesson	52 %	51 %
Combined Total	93 %	94 %

Purchasing

For the year ended December 31, 2020, two suppliers accounted for more than 86% of the Company’s purchases of raw materials for products that are manufactured by the Company.

Three suppliers accounted for more than 92% of the Company’s purchases of raw materials manufactured by the Company for the year ended December 31, 2019.

The Company purchases various API of finished products at contractual minimum levels through agreements with third parties. Individually, none of these agreements are material to the Company, therefore, the Company does not believe at this time that any of the purchase obligations represent levels above the normal course of business.

Sales by Product

For the years ended December 31, 2020 and 2019, one product accounted for 33% and 57%, respectively, of the Company's total gross product sales.

Royalty Sales

The following tables set forth the percentage of the revenues and accounts receivable recognized in connection with Company's royalty contracts for the years ended December 31, 2020 and 2019, respectively:

	Year Ended December 31, 2020	
	Gross Royalty Revenue	Gross Royalty Accounts Receivable
Customer 4	53 %	54 %
Customer 5	24 %	12 %
Combined Total	77 %	66 %

	Year ended December 31, 2019	
	Gross Royalty Revenue	Gross Royalty Accounts Receivable
Customer 4	54 %	93 %
Customer 5	12 %	NM %
Combined Total	66 %	93 %

NM – Not Meaningful

Note 12. Shareholders’ Equity

Osmotica Pharmaceuticals plc 2018 Equity Incentive Plan

Prior to the IPO, the Company adopted the 2018 Incentive Plan (the "2018 Plan") which became effective upon our IPO and allows for the issuance of up to 4,100,000 ordinary shares of the Company ("Shares") in satisfaction of awards under the 2018 Plan. The 2018 Plan provides for the grant of share options, SARs, restricted and unrestricted share and share units, performance awards, and other awards that are convertible into or otherwise based on the Company’s shares to employees and non-employee directors, consultants and advisors to the Company. The Company's compensation committee shall determine the time at which an award vests or becomes exercisable. In connection with the IPO, the Company granted share options under the 2018 Plan that will vest on the fourth anniversary of the grant date, subject to the employee’s continued employment through such vesting date.

Osmotica Holdings S.C.Sp. 2016 Equity Incentive Plan

Effective February 3, 2016, Osmotica Holdings S.C.Sp. adopted the 2016 Equity Incentive Plan (the "2016 Plan") which allows for the issuance of up to 75,000 Units in Osmotica Holdings S.C.Sp. Options to purchase common units granted under the 2016 Plan vest and become exercisable in whole or in part, in accordance with vesting conditions set by the

Company's board of directors. Each option award had a maximum term of ten years from the date of grant. The option awards granted under the 2016 Plan were made up of two components: Time Awards and Performance Awards. The Time Awards vested 25% annually from original grant date, subject to continuous employment on each vesting date. The vesting of the Performance awards was subject to performance criteria, requiring the majority investors in the Company to receive (on a cumulative basis) aggregate net proceeds exceeding certain return on investment targets. The Time Awards and Performance Awards contained a sales restriction in the form of a liquidity event and subsequent disposal of common units by the Major Limited Partners (as defined in the 2016 Plan) before the employee was able to sell vested and exercised common units and were required to remain employed to avoid Company's call option on such common units at a lower of cost or fair market value.

Amended and Restated Osmotica Pharmaceuticals plc. 2016 Equity Incentive Plan

On August 14, 2018, the board of directors amended and restated the 2016 Plan in connection with the Reorganization. The Amended and Restated 2016 Equity Incentive Plan (the "Amended 2016 Plan") became effective upon our IPO which closed on October 22, 2018. In connection with the Reorganization, options to purchase common units of Osmotica Holdings S.C.Sp. were converted into options to purchase shares of the Company and existing sales restriction was removed. In connection with the IPO, the number of shares issuable pursuant to the Amended 2016 Plan and the corresponding exercise prices of options were adjusted to reflect a stock split initiated prior to the IPO. Additionally, effective upon the IPO, the Amended 2016 Plan modified the terms of Performance Awards previously issued under the 2016 Plan by converting these awards to time based awards vesting in equal annual installments on the first four anniversaries of the IPO, subject to continuous employment. There were 3,015,572 ordinary shares issuable upon exercise of options issued and outstanding as of December 31, 2018 under the Amended 2016 Plan. Prior to the modification date, there was no share based compensation recognized for the Performance Awards due to a performance condition based upon the majority investors in the Company receiving aggregate net proceeds exceeding certain return on investment targets.

Ordinary Share Repurchase Program

In September 2019, the Company's board of directors authorized the repurchase of up to 5,251,892 ordinary shares pursuant to a share repurchase program. Purchases under the ordinary share repurchase program can be made on the open market or in privately negotiated transactions, with the size and timing of these purchases based on a number of factors, including the price of our ordinary shares, our business and market conditions. The Company has retired ordinary shares acquired under the repurchase program. For the years ended December 31, 2020 and 2019, the Company repurchased 1,435,725 ordinary shares for an aggregate of $8.1 million and 673,182 ordinary shares for an aggregate of $2.8 million, respectively.

2019 Employee Share Purchase Plan

In September 2019, the Company's board of directors adopted and approved, the Employee Share Purchase Plan (the "ESPP"). The ESPP allows each eligible employee who is participating in the plan to purchase shares by authorizing payroll deductions of up to $2,000 per payroll period. Unless the participating employee has previously withdrawn from the offering, accumulated payroll deductions will be used to purchase shares on the last business day of the offering period at a price equal to 85 percent of the fair market value of the shares on the first business day or the last business day of the offering period, whichever is lower. Under applicable tax rules, an employee may purchase no more than $25,000 worth of ordinary shares, valued at the start of the purchase period, under the ESPP in any calendar year. There is no minimum holding period associated with shares purchased pursuant to this plan. An employee's purchase rights terminate immediately upon termination of employment.

The Company accounts for employee stock purchases made under its ESPP using the estimate grant date fair value of accounting in accordance with ASC 718, Stock Compensation. The purchase price discount and the look-back feature cause the ESPP to be compensatory and the Company to recognize compensation expense. The compensation cost is recognized on a straight-line basis over the requisite service period. The Company recognized $113,860 and $31,619 of compensation expense for the years ended December 31, 2020 and 2019, respectively. The Company values ESPP shares using the Black-Scholes model.

As of December 31, 2020 and 2019, there were no unrecognized ordinary share compensation expense related to the ESPP. There were 51,905 ordinary shares issued under the ESPP during the year ended December 31, 2020. There were no ordinary shares issued under the ESPP during the year ended December 31, 2019. On January 4, 2021, the Company issued 39,321 ordinary shares to the employees who participated in the ESPP during the offering period ended December 31, 2020.

Share-based Compensation

The compensation cost that has been charged against income for all incentive plans was $4.8 million for the year ended December 31, 2020 and $4.9 million for the year ended December 31, 2019. The conversion of the Performance Awards issued under the 2016 Plan to Time Awards upon IPO under the Amended 2016 Plan was accounted for as a modification where the fair value of such awards determined on a modification date, or the IPO date is being recognized over their remaining vesting period.

Share-Based Award Activity

A summary of option activity granted under the 2016 Plan and the Amended 2016 Plan as of December 31, 2020, and changes during the year then ended is presented below:

2016 Equity Incentive Plan	**Number of Shares Time**	**Weighted Average Exercise Price**	**Weighted Average Contractual Term**
Outstanding at January 1, 2019	3,015,572	$ 14.96	7.5 years
Granted	—	—	
Exercised	—	—	
Expired / Forfeited	(55,686)	$ 14.95	
Outstanding at December 31, 2019	2,959,886	$ 14.96	6.4 years
Vested Options at December 31, 2019	1,459,005	$ 14.96	6.4 years
Granted	—	—	
Exercised	—	—	
Expired / Forfeited	(132,786)	$ 15.21	
Outstanding at December 31, 2020	2,827,100	$ 14.95	5.4 years
Vested Options at December 31, 2020	2,099,950	$ 14.95	5.4 years

There were no options granted during 2020 and 2019, respectively, under the 2016 Plan. The intrinsic value of options under the 2016 Plan outstanding at December 31, 2020 and 2019, respectively, was $0. The fair value of options vested under the 2016 Plan during the years ended December 31, 2020 and 2019 were $8,832 and $6,431, respectively.

A summary of option activity granted under the 2018 Plan as of December 31, 2020, and changes during the year then ended is presented below:

2018 Equity Incentive Plan	Number of Shares Time	Weighted Average Exercise Price	Weighted Average Contractual Term
Outstanding at January 1, 2019	178,600	$ 7.00	9.8 years
Granted	—	—	
Exercised	—	—	
Expired / Forfeited	(44,400)	$ 7.00	
Outstanding at December 31, 2019	134,200	$ 7.00	8.7 years
Vested Options at December 31, 2019	—	0	
Granted			
Exercised			
Expired / Forfeited	(37,800)	$ 7.00	
Outstanding at December 31, 2020	96,400	$ 7.00	
Vested Options at December 31, 2020	—	—	7.7 years

There were no options granted during 2020 and 2019, respectively.

The estimated fair value of the options is expensed over the requisite service period, which is generally the vesting period on a graded vesting basis. As of December 31, 2020 and 2019, there was $0.8 million and $2.2 million of total unrecognized compensation cost related to nonvested options granted under the Incentive Plans. That cost is expected to be recognized over a weighted-average period of 1.3 years and 1.5 years, respectively.

The fair value of option awards is estimated using the Black-Scholes option-pricing model. Exercise price of each award is generally not less than the per share fair value in effect as of that award date. The determination of fair value using the Black-Scholes model is affected by the Company's share fair value as well as assumptions regarding a number of complex and subjective variables, including expected price volatility, risk-free interest rate and projected employee share option exercise behaviors. There were no options granted during 2020 and 2019, respectively.

For all periods prior to the IPO, our Board of Directors has determined the fair value of the common unit underlying our option with assistance from management and based upon information available at the time of grant. Prior to our IPO, given the absence of a public trading market for our common units, estimating the fair value of our common units was based on the actual operational and financial performance, current business conditions and discounted cash flow projections. The estimated fair value of our common units, prior to our IPO was adjusted for lack of marketability and control existing at the grant date.

Restricted and Performance Stock Units

On May 18, 2020 and May 20, 2020, the Company granted performance stock units ("PSUs") under its existing 2018 Incentive Plan (the "2018 Plan") to certain key employees of the Company that gives holders the potential to receive a certain number of earned PSUs at the end of a pre-determined term. Unless earlier terminated, forfeited, relinquished or expired, the earned PSUs will vest in full on the vesting date, subject to the grantee remaining in continuous employment from the date of grant through the vesting date. The vesting date is the third anniversary from the grant date for the PSUs granted on May 18, 2020 and the fifth anniversary from the grant date for the PSUs granted on May 20, 2020. The number of PSUs that become earned PSUs as of the end of the performance period shall be equal to the number of PSUs multiplied by the applicable percentage based on Stock Price Hurdle attainment, as set forth in the PSU Award Agreement and 2018 Plan. The fair value of these market-based awards is estimated on the date of grant using a Monte Carlo simulation model with the following assumptions:

	Years Ended

	December 31, 2020
Expected volatility	90 %
Risk-free interest rate	.21% - .24 %
Expected dividend yield	— %
Performance period in years	3.00

The Company estimates its expected volatility by using a combination of historical share price volatilites of similar companies within our industry. The risk-free interest rate assumption is based on observed interest rates for the appropriate term of the Company's options on a grant date.

As of December 31, 2020 total compensation cost not yet recognized related to unvested PSUs $3.2 million which is expected to be recognized over a weighted average period of 3.0 years.

The following table summarizes the information as of December 31, 2020 and activity during 2020 related to our PSUs:

	Number of PSUs	Weighted-Average Grant Date Fair Value	Weighted-Average Remaining Contractual Term (Years)
Outstanding at January 1, 2020	—	$ —	—
PSUs granted	825,997	4.99	—
PSUs vested	—	—	—
PSUs forfeited	(36,198)	4.90	—
Outstanding at December 31, 2020	789,799	$ 4.99	3.01

During 2020 and 2019 we granted restricted stock units, or RSUs, covering an equal number of our ordinary shares to employees and certain directors with a weighted average grant date fair value of $4.46 and $7.19, respectively. The fair value of RSUs are determined on the date of grant based on the market price of our ordinary shares as of that date. The fair value of the RSUs is recognized ratably over the vesting period of four years for employees and one to three years for directors. As of December 31, 2020 and 2019 total compensation cost not yet recognized related to unvested RSUs was $8.5 million and $8.0 million which is expected to be recognized over a weighted average period of 2.8 years and 3.2 years, respectively.

The following table summarizes the information as of December 31, 2020 and activity during 2020 related to our RSUs:

	Number of RSUs	Weighted-Average Grant Date Fair Value	Weighted-Average Remaining Contractual Term (Years)
Outstanding at January 1, 2019	—	$ —	—
RSUs granted	1,486,020	7.19	—
RSUs vested	—	—	—
RSUs forfeited	(51,787)	7.18	—
Outstanding at December 31, 2019	1,434,233	$ 7.19	3.20
RSUs granted	976,429	4.46	—
RSUs vested	(300,788)	6.73	—
RSUs forfeited	(118,317)	6.07	—
Outstanding at December 31, 2020	1,991,557	$ 5.99	2.11

2020 Equity Offering

On January 13, 2020 we completed a follow-on equity offering and allotted 6,900,000 ordinary share at a public offering price of $5.00 per share. The number of shares issued in this offering reflected the exercise in full of the underwriters' option to purchase 900,000 ordinary shares. The aggregate net proceeds from the follow-on offering were approximately $31.8 million after deducting underwriting discounts and commissions and offering expenses. Proceeds from the offering were used for working capital and general corporate purposes.

On July 16, 2020 we completed a follow-on equity offering and allotted 5.0 million ordinary shares. The aggregate proceeds from the follow-on offering were approximately $30.6 million after deducting offering expenses. Proceeds from the offering will be used for working capital and general corporate purposes.

Note 13. Earnings (Loss) per Ordinary Share

Basic net income (loss) per ordinary share is computed by dividing net income (loss) by the weighted-average number of shares of ordinary shares outstanding during the period. Diluted net income per ordinary shares is computed by dividing net income by the weighted average number of shares of ordinary shares and potentially dilutive outstanding shares of ordinary shares during the period to reflect the potential dilution that could occur from ordinary shares issuable through contingent share arrangements, share options and warrants.

The following potentially dilutive securities have been excluded from the computation of diluted weighted average shares and units outstanding as they would have been anti-dilutive at December 31, 2020 and 2019:

	Year Ended December 31,	
	2020	2019
Performance and restricted stock units	2,781,356	1,434,233
Options to purchase ordinary shares	2,923,500	3,093,786
Shares to be purchased through employee stock purchase plan	39,321	29,550

Note 14. Commitments and Contingencies

Contingent Milestone Payments

The Company has entered into strategic business agreements for the development and marketing of finished dosage form pharmaceutical products with various pharmaceutical development companies. Each strategic business agreement includes a future payment schedule for contingent milestone payments and in certain strategic business agreements, minimum royalty payments. The aggregate amount of future potential milestone payments payable in connection with such agreement are currently not material to the Company's financial statements. The Company will be responsible for contingent milestone payments and minimum royalty payments to these strategic business partners based upon the occurrence of future events. Each strategic business agreement defines the triggering event of its future payment schedule, such as meeting product development progress timelines, successful product testing and validation, successful clinical studies, and various U.S. Food and Drug Administration and other regulatory approvals. The aggregate amount of future potential milestone payments are currently not material to our financial statements.

Royalty Obligations

The Company has agreements with third parties that require the Company to make minimum royalty payments on a calendar year basis.

The following table lists the Company’s enforceable and legally binding royalty obligations as of December 31, 2020 (in thousands):

	Royalty Obligations
Less than 1 year	$ 1,000
1 to 3 years	3,000
3 to 5 years	2,000
More than 5 years	83
Total	$ 6,083

Supply Agreement Obligations

The Company is engaged in various supply agreements with third parties which obligate the Company to purchase various API or finished products at contractual minimum levels. None of these agreements are individually in the aggregate material to the Company. Further, the Company does not believe at this time that any of the purchase obligations represent levels above that of normal business demands.

The Company has no enforceable and legally binding purchase obligations as of December 31, 2020.

Defined Contribution Plan

Vertical/Trigen and Legacy Osmotica both had a defined contribution plan under Section 401(k) of the Internal Revenue Code ("IRC") as of December 31, 2016 pursuant to the Merger (the "Contribution Plans"). The employees of the respective companies are eligible to participate in the Contribution Plans. Participants may contribute amounts through payroll deductions not to exceed IRC limitations. For the year ended December 31, 2016, the Vertical/Trigen Plan provided for nonelective employer contributions equal to 3% of basic compensation. The separate Contribution Plans were merged into one plan effective January 1, 2017. Effective January 1, 2017, the plan provides for employer matching contributions equal to 100% of each employee's elective deferrals up to 3% of base salary, plus 50% of each employee's elective deferrals between 3% and 5% of base salary. For the years ended December 31, 2020 and 2019, the Company recognized expenses related to its contributions under the Plan of $0.5 million and $1.3 million, respectively.

Legal Proceedings

The Company is a party in legal proceedings and potential claims arising from time to time in the ordinary course of its business. The amount, if any, of ultimate liability with respect to such matters cannot be determined. Despite the inherent uncertainties of litigation, management of the Company believes that the ultimate disposition of such proceedings and exposures will not have a material adverse impact on the financial condition, results of operations, or cash flows of the Company.

On February 16, 2018, the Company received FDA approval for its amantadine extended release tablets under the trade name Osmolex ER. On that same date the Company filed in the Federal District Court for the District of Delaware a Complaint for Declaratory Judgment of Noninfringement of certain patents owned by Adamas Pharmaceuticals, Inc. (Osmotica Pharmaceutical US LLC and Vertical Pharmaceuticals, LLC vs. Adamas Pharmaceuticals, Inc. and Adamas Pharma, LLC). Adamas was served with the Complaint on February 21, 2018. Adamas filed an answer on April 13, 2018 denying the allegations in the Complaint and reserving the ability to raise counterclaims as the litigation progresses. On September 20, 2018, Adamas filed an amended answer to the Company’s Complaint for Declaratory Judgment of Noninfringement, with counterclaims alleging infringement of certain patents included in the Company’s Complaint and requesting that the court grant Adamas damages, injunctive relief and attorneys’ fees. On December 2, 2020, we entered into an agreement to settle the litigation with Adamas. Under the terms of the agreement, both parties agreed to drop their respective claims relating to the patent litigation, and Adamas agreed to acquire the global rights to Osmolex ER from the Company for $7.5 million. The sale of the global rights to Osmolex ER closed in January 2021 at which time the related gain was recorded.

Additionally, in connection with the settlement and the sale of the global rights to Osmolex ER, the parties entered into a supply agreement pursuant to which the Company agreed to supply Adamas with amantadine extended release tablets for a six-year term, subject to possible two-year extensions and customary closing conditions.

On April 30, 2019, the Company was served with a complaint in an action entitled *Leo Shumacher, et al., v. Osmotica Pharmaceuticals plc, et al., Superior Court of New Jersey, Somerset County No. SOM-L-000540-19*. On May 10, 2019, a Complaint entitled *Jeffrey Tello, et al., v. Osmotica Pharmaceuticals plc, et al., Superior Court of New Jersey, Somerset County No. SOM-L-000617-19* was filed in the same court as the Shumacher action. The complaints named the Company, certain of the Company's directors and officers and the underwriters of the Company's initial public offering as defendants in putative class actions alleging violations of Sections 11 and 15 of the Securities Act of 1933 related to the disclosures contained in the registration statement and prospectus used for the Company's initial public offering of ordinary shares. On July 22, 2019, the plaintiffs filed an amended complaint consolidating the two actions, reiterating the previously pled allegations and adding an additional individual defendant. The parties participated in a mediation and reached an agreement in principle to settle the litigation on December 15, 2020. The agreement in principle calls for a payment by the Company of $5.25 million (a portion of which we expect would be covered by applicable insurance) and would fully resolve all claims asserted in the litigation against all defendants named in the litigation, including the Company. No party would admit any wrongdoing as part of the proposed settlement, which was reached to avoid the further cost and distraction of litigation. The agreement in principle contemplates the negotiation and execution of a final settlement agreement. The settlement is also subject to preliminary approval by the Superior Court of New Jersey, notice to the putative class, and subsequent final approval by the Superior Court of New Jersey.

Note 15. Income Taxes

Osmotica Pharmaceuticals plc (formerly known as Lilydale Limited and Osmotica Pharmaceuticals Limited) is an Irish public limited company. Osmotica Holdings S.C.Sp. acquired Osmotica Pharmaceuticals plc on April 30, 2018 for the purpose of facilitating an offering of ordinary shares in an initial public offering. On October 22, 2018, Osmotica Pharmaceuticals plc completed its initial public offering (the "IPO"). Immediately prior to the IPO and prior to the commencement of trading of Osmotica Pharmaceuticals plc's ordinary shares on the Nasdaq Global Select Market, Osmotica Holdings S.C.Sp. undertook a series of restructuring transactions that resulted in Osmotica Pharmaceuticals plc being the direct parent of Osmotica Holdings S.C.Sp. Osmotica Holdings S.C.Sp. is a Luxembourg special limited partnership, formed on January 28, 2016. Osmotica Holdings US LLC, a subsidiary of Osmotica Holdings S.C.Sp. entered into a fifty-fifty partnership (the "Merger"), effective February 3, 2016, pursuant to a definitive agreement between Vertical/Trigen Holdings, LLC ("Vertical/Trigen") and members, and Osmotica Holdings Corp Limited and Subsidiaries. Osmotica Holdings S.C.Sp. and several other holding companies and partnerships were formed as a result of the Merger. Vertical/Trigen Holdings, LLC became a wholly-owned subsidiary of certain U.S. corporations that are directly or indirectly owned by Osmotica Holdings U.S. LLC. These subsidiaries are included in the consolidated financial statements and are designated as C Corp filers for U.S. tax purposes. As such, the activity of Vertical/Trigen Holdings, LLC is subject to federal income tax at the level of its U.S. corporate parents beginning in 2016. In addition, the Company's foreign entities are subject to income tax in various foreign jurisdictions.

The Company follows the Income Taxes topic of ASC 740, which prescribes a recognition threshold and measurement attribute criteria for the financial statement recognition and measurement of a tax position taken or expected to be taken

in a tax return, as well as guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. The loss before income taxes and the related tax benefit are as follows (in thousands):

	December 31, 2020	December 31, 2019
Loss before income taxes		
U.S. operations	$ 66,836	$ 140,664
Non-U.S. operations	17,450	157,358
Total loss before income taxes	84,286	298,022
Current tax benefit (provision)		
Federal	4,541	(1,387)
State	(232)	292
Foreign	(985)	(791)
Total current tax benefit (expenses)	3,324	(1,886)
Deferred tax benefit (provision)		
Federal	(82)	15,396
State	—	712
Foreign	1,455	12,899
Total deferred tax benefit	1,373	29,007
Total benefit for income taxes	$ 4,697	$ 27,121

A reconciliation of the statutory federal income tax rate to the Company's effective tax rate for the years ended December 31, 2020 and 2019 respectively are as follows:

	December 31, 2020	December 31, 2019
Federal tax at 21% statutory rate	21.00 %	21.00 %
State and local income taxes, net of federal benefit	1.11 %	0.91 %
Differences in tax effects on foreign income	(3.38)%	(6.43)%
Federal tax credits	1.35 %	0.59 %
Uncertain tax positions	1.40 %	0.04 %
NOL carryback rate differential	3.87 %	0.00 %
Tax audit adjustment	(3.65)%	0.00 %
Change in valuation allowance	(15.52)%	(7.02)%
Permanent adjustments	(0.79)%	0.00 %
Other	0.18 %	0.01 %
Effective tax rate	5.57 %	9.10 %

Deferred taxes reflect the tax effects of the differences between the amounts recorded as assets and liabilities for financial statement purposes and the comparable amounts recorded for income tax purposes. Significant components of the deferred tax assets (liabilities) at December 31, 2020 and 2019 respectively are as follows (in thousands):

	December 31, 2020	December 31, 2019
Deferred tax assets:		
Accounts receivable	$ —	$ 31
Accrued expenses	5,921	9,535
Inventory	295	243
Investment in partnership	2,393	8,696
Net operating losses	1,285	2,627
Operating lease liabilities	657	1,121
Tax credits	6,486	3,249
Share compensation	1,816	1,399
Intangible assets	19,082	—
Other	3,328	1,685
Less: valuation allowance	(27,811)	(21,216)
Deferred tax liabilities:		
Prepaid expenses	(658)	(689)
Property plant & equipment	(3,261)	(3,252)
Operating lease assets	(623)	(1,115)
Intangible assets	(9,254)	(3,814)
Total deferred income taxes	$ (344)	$ (1,500)

Included in the deferred tax balances above is a net deferred tax asset of $14.9 million and deferred tax liability of $4.6 million, respectively for 2020 and 2019 related to the assets and liabilities in Vertical/Trigen Holdings, LLC, which is a partnership for Federal income tax purposes. The Company owns in aggregate 100% of Vertical/Trigen Holdings, LLC and the assets and liabilities of this entity are included in the consolidated financial statements of the Company.

As of December 31, 2020 and 2019, the Company had a federal and state net operating loss carryover of $29.1 million and $2.2 million, respectively and net operating loss carryovers in certain foreign tax jurisdictions of $3.8 million and $9.9 million, respectively which will begin to expire in 2022. At December 31, 2020 and 2019, the Company had total tax credit carryovers of approximately $6.7 million and $4.6 million primarily consisting of Federal Orphan Drug Tax Credit carryovers. These credit carryovers begin to expire in 2035. The Company assesses the realizability of the deferred tax assets at each balance sheet date based on actual and forecasted operating results in order to determine the proper amount, if any, required for a valuation allowance. As of December 31, 2020 and 2019, the Company maintains valuation allowances on deferred tax assets applicable to entities in the United States and foreign jurisdictions for which separate income tax returns are filed, where realization of the related deferred tax assets from future profitable operations is not reasonably assured. In 2020, the valuation allowance increased by $6.6 million.

The Coronavirus Aid Relief, and Economic Security Act (CARES Act) was enacted on March 27, 2020 in the United States. The CARES Act and related notices include several significant provisions, including delaying certain payroll tax payments, mandatory transition tax payments under the Tax Cuts and Jobs Act, and estimated income tax payments that we expect to defer to future periods. The Cares Act provides a five year carryback for losses generated in 2018-2020, The Company incurred losses in the current period that will be carried back to the earliest year, 2015. The loss generated in 2020 will be carried back to a tax year with a higher tax rate providing a benefit of $3.2 million. The impact to the Company’s effective tax rate is 3.8%. The Cares Act made the business interest limitation less restrictive in that it increased the deduction limit for business interest to 50% of adjusted taxable income as well as allowing taxpayers to elect to utilize 2019 adjusted taxable income when computing the limitation in 2020. The Company utilized this clause in the CARES ACT when computing the current period income tax benefit.

The Company files income tax returns in U.S. federal, state and certain international jurisdictions. For federal and certain state income tax purposes, the Company's 2015 through 2018 tax years remain open for examination by the tax

authorities under the normal statute of limitations. For certain international income tax purposes, the Company's 2015 through 2019 tax years remain open for examination by the tax authorities under the normal statute of limitations.

Two of the Company’s subsidiaries, Osmotica Pharmaceutical Corp. and Valkyrie Group Holding Inc., finalized audits by the Internal Revenue Service for tax years 2016 and 2017. The Company agreed to an IRS adjustments and correspondingly recorded tax expense of $1.9 million which includes $1.4 million of income tax $0.5 million of interest and penalty expense.

No provision is made for foreign withholding or income taxes associated with the cumulative undistributed earnings of the foreign subsidiaries. Any future foreign withholding or income taxes associated with the undistributed earnings are not anticipated to be material.

A reconciliation was completed of the beginning and ending amounts of unrecognized tax benefits, excluding accrued interest, for December 31, 2020 and 2019. It is not anticipated that the amount of unrecognized tax benefits will materially change in the next 12 months. If recognized, the total amount of unrecognized benefits of $0.2 million would an immaterial impact on the effective tax rate.

	December 31, 2020	December 31, 2019
Unrecognized tax benefits beginning balance	$ 2,677	$ 2,218
Additions related to current period tax positions	171	459
Releases related to prior period tax positions	(2,677)	—
Unrecognized tax benefits ending balance	$ 171	$ 2,677

The Company classifies interest expense related to unrecognized tax benefits as componenets of the tax provision for income taxes. Interest and penalties recognized in the consolidated income statement as of December 31, 2020 resulted in an immaterial amount of interest and penalties as of December 31, 2020 and in a decrease of $0.1 million as of December 31, 2019. As of December 31, 2020 and 2019 the Company has recorded accrued interest of an immaterial amount and $0.2 million, respectively. The current year release of unrecognized tax benefits is due to an accounting method change which eliminated the need for an uncertain tax position.

Note 16. Related Parties

On August 22, 2018, the Company entered into a Master Service Agreement with United Biosource, LLC or UBC, an Avista portfolio company, for prescription processing and patient access services. In November 2018, the Company and UBC entered into a Statement of Work for services through the end of 2019 valued at approximately $2.4 million. During 2019, we amended the initial Statement of Work to add approximately $275,000 of additional services for 2019. On January 1, 2020, we entered into an additional Statement of Work for services during 2020 valued at approximately $1.7 million. The Company had accrued $0.2 million of liabilities related to this agreement as of December 31, 2020 and had recognized $1.0 million of related expense for the year ended December 31, 2020. The Company had accrued less than $0.1 million of liabilities related to this agreement as of December 31, 2019 and had recognized $1.9 million of related expense for the year ended December 31, 2019.

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

None.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2020. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2020, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective.

Changes in internal control over financial reporting

There were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during the quarter ended December 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance of the reliability of financial reporting and of the preparation of financial statements for external reporting purposes, in accordance with U.S. generally accepted accounting principles.

Internal control over financial reporting includes policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and disposition of assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with the authorization of its management and directors; and (3) provide reasonable assurance regarding the prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on its financial statements.

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

Our management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2020. In making this assessment, management used the criteria established by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework (2013). These criteria are in the areas of control environment, risk assessment, control activities, information and communication, and

monitoring. Management's assessment included extensive documentation, evaluating and testing the design and operating effectiveness of its internal controls over financial reporting.

Based on management's processes and assessment, as described above, management has concluded that, as of December 31, 2020, our internal control over financial reporting was effective.

Attestation Report of the Registered Public Accounting Firm

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm due to an exemption established by the JOBS Act for "emerging growth companies."

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Certain information regarding our executive officers is set forth at the end of Part I, Item 1 of this Form 10-K under the heading, "Information about our Executive Officers." The remaining information required with respect to this Item 10 is incorporated by reference to the information to be contained in our Proxy Statement for the 2020 Annual Meeting of Shareholders, or the Proxy Statement.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is incorporated by reference to the information to be contained in our definitive Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item 12 is incorporated by reference to the information to be contained in our Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item 13 is incorporated by reference to the information to be contained in our Proxy Statement.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item 14 is incorporated by reference to the information to be contained in our Proxy Statement.

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

Financial Statements

None

Financial Statement Schedules

None

ITEM 16. FORM 10-K SUMMARY

None

Exhibits

Exhibit No.	Description
2.1#	Business Combination Agreement, dated as of December 3, 2015, among Osmotica Holdings Corp Limited, the shareholders of Osmotica Holdings Corp Limited party thereto, Altchem Limited, Vertical/Trigen Holdings, LLC, the shareholders of Vertical/Trigen Holdings, LLC party thereto, Avista Capital Partners III GP, LP, and Osmotica Holdings S.C.Sp. (incorporated by reference to Exhibit 2.1 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
3.1	Memorandum and Articles of Association Osmotica Pharmaceuticals plc (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2018 filed on March 28, 2019, Commission File No. 001-38709)
4.1	Shareholders' Agreement (incorporated by reference to Exhibit 4.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2018 filed on March 28, 2019, Commission File No. 001-38709)
4.2	Amendment No. 1, dated as of November 20, 2020, to the Shareholders Agreement, dated as of October 17, 2018, by and among, Osmotica Pharmaceuticals plc, ACP Holdco (Offshore), L.P., ACP III AIV, L.P., Altchem Limited, Orbit Co-Invest A-I LLC, Orbit Co-Invest I LLC, Orbit Co-Invest III LLC, and the management shareholders identified therein
4.3	Form of Ordinary Share Certificate (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
4.4	Description of Osmotica Securities
10.1†	License, Supply, Marketing, Distribution and Collaboration Agreement, dated as of November 24, 2003, by and between Upsher-Smith Laboratories, Inc. and Orion Corporation (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.2	First Amendment to License, Supply, Marketing, Distribution and Collaboration Agreement, dated as of May 20, 2004, by and between Upsher-Smith Laboratories, Inc. and Orion Corporation (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.3	Second Amendment to License, Supply, Marketing, Distribution and Collaboration Agreement, dated as of June 30, 2004, by and between Upsher-Smith Laboratories, Inc. and Orion Corporation (incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.4†	Third Amendment to License, Supply, Marketing, Distribution and Collaboration Agreement, dated as of May 20, 2010, by and between Upsher-Smith Laboratories, Inc. and Orion Corporation (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.5†	Fourth Amendment to License, Supply, Marketing, Distribution and Collaboration Agreement, dated as of August 1, 2013, by and between Upsher-Smith Laboratories, Inc. and Orion Corporation (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)

10.6†	Fifth Amendment to License, Supply, Marketing, Distribution and Collaboration Agreement, dated as of January 1, 2018, by and between Upsher-Smith Laboratories, Inc. and Orion Corporation (incorporated by reference to Exhibit 10.6 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.7†	Distribution and Supply Agreement, dated as of June 28, 2011, by and between Cipher Pharmaceuticals Inc. and Vertical Pharmaceuticals Inc. (incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.8†	First Amendment to Distribution and Supply Agreement, dated as of March 27, 2012, by and between Cipher Pharmaceuticals Inc. and Vertical Pharmaceuticals Inc. (incorporated by reference to Exhibit 10.8 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.9†	Second Amendment to Distribution and Supply Agreement, dated as of November 21, 2013, by and between Cipher Pharmaceuticals Inc. and Vertical Pharmaceuticals Inc. (incorporated by reference to Exhibit 10.9 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.10†	Third Amendment to Distribution and Supply Agreement, dated as of January 1, 2015, by and between Cipher Pharmaceuticals Inc. and Vertical Pharmaceuticals Inc. (incorporated by reference to Exhibit 10.10 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.11†	Methylphenidate Supply Agreement, effective as of March 16, 2017, by and among Mallinckrodt LLC, Osmotica Kereskedelmi es Szolgalato Kft and Osmotica Pharmaceutical Corporation (incorporated by reference to Exhibit 10.11 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.12†	Manufacturing and Supply Agreement, effective as of March 8, 2010, by and between Mikart, Inc. and Vertical Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.12 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.13†	Tablets Marketing Rights Agreement, dated as of March 10, 2010, by and between Argent Development Group, LLC and Vertical Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.13 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.14†	Master Manufacturing Services Agreement, dated as of August 21, 2014, by and between Patheon Pharmaceuticals Inc. and Osmotica Pharmaceutical Corp. (incorporated by reference to Exhibit 10.14 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357) (incorporated by reference to Exhibit 10.14 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.15	First Amendment to Master Manufacturing Services Agreement, dated as January 1, 2017, by and between Patheon Pharmaceuticals Inc. and Osmotica Pharmaceutical US, LLC (incorporated by reference to Exhibit 10.15 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.16†	Product Agreement, dated as of October 1, 2014, by and between Patheon Pharmaceuticals Inc. and Osmotica Pharmaceutical Corp. (incorporated by reference to Exhibit 10.16 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)

10.17†	License Agreement dated as of August 31, 2011 by and between VOOM, LLC and Revitalid, Inc. (incorporated by reference to Exhibit 10.17 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.18†	Exclusive Supply Agreement, dated as of February 7, 2013, by and between Nephron Pharmaceuticals Corporation and Revitalid, Inc. (incorporated by reference to Exhibit 10.18 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.19†	First Amendment to Exclusive Supply Agreement, dated as October 24, 2017 by and between Nephron Pharmaceuticals Corporation and Revitalid, Inc. (incorporated by reference to Exhibit 10.19 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.20†	License Agreement dated as of July 28, 2020, by and between RVL Pharmaceuticals, Inc. and Santen Pharmaceutical Co. Ltd. (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on July 31, 2020, Commission File No. 001-38709)
10.21	Credit Agreement, dated February 3, 2016, by and among Osmotica Pharmaceutical Corp., Orbit Blocker I LLC, Orbit Blocker II LLC, Valkyrie Group Holdings, Inc., Osmotica Holdings US LLC, the lenders party thereto, and CIT Bank, N.A. as administrative agent and swingline lender (incorporated by reference to Exhibit 10.20 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.22	First Amendment to Credit Agreement, dated November 10, 2016, by and among Osmotica Pharmaceutical Corp., Orbit Blocker I LLC, Orbit Blocker II LLC, Valkyrie Group Holdings, Inc., Osmotica Holdings US LLC, the lenders party thereto, and CIT Bank, N.A. as administrative agent and swingline lender (incorporated by reference to Exhibit 10.21 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.23	Second Amendment to Credit Agreement, dated April 28, 2017, by and among Osmotica Pharmaceutical Corp., Orbit Blocker I LLC, Orbit Blocker II LLC, Valkyrie Group Holdings, Inc., Osmotica Holdings US LLC, the lenders party thereto, and CIT Bank, N.A. as administrative agent and swingline lender (incorporated by reference to Exhibit 10.22 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.24	Third Amendment to Credit Agreement, dated December 21, 2017, by and among Osmotica Pharmaceutical Corp., Orbit Blocker I LLC, Orbit Blocker II LLC, Valkyrie Group Holdings, Inc., Osmotica Holdings US LLC, the lenders party thereto, and CIT Bank, N.A. as administrative agent and swingline lender (incorporated by reference to Exhibit 10.23 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.25	Fourth Amendment to Credit Agreement, dated December 11, 2020, by and among Osmotica Pharmaceutical Corp., Orbit Blocker I LLC, Orbit Blocker II LLC, Valkyrie Group Holdings, Inc., Osmotica Holdings US LLC, the lenders party thereto, and CIT Bank, N.A. as administrative agent and swingline lender
10.26+	Form of Director and Officer Indemnification Agreement (incorporated by reference to Exhibit 10.24 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.27+	Form of Osmotica Holdings US LLC Director and Corporate Secretary Indemnification Agreement (incorporated by reference to Exhibit 10.25 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)

10.28+	Form of Nonqualified Option Award Agreement under the Osmotica Pharmaceuticals plc 2018 Incentive Plan (incorporated by reference to Exhibit 10.26 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.29+	Osmotica Pharmaceuticals plc 2018 Employee Share Purchase Plan (incorporated by reference to Exhibit 10.27 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.30+	Form of Nonqualified Option Award Agreement under the Amended and Restated Osmotica Pharmaceuticals plc 2016 Equity Incentive Plan (incorporated by reference to Exhibit 10.28 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.31+	Amended and Restated Osmotica Pharmaceuticals plc 2016 Equity Incentive Plan (incorporated by reference to Exhibit 10.29 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.32+	Osmotica Pharmaceuticals plc 2018 Incentive Plan (incorporated by reference to Exhibit 10.30 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.33+	Osmotica Pharmaceuticals plc 2018 Annual Cash Incentive Plan (incorporated by reference to Exhibit 10.31 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.34+	Employment Agreement, dated December 3, 2015, by and between Vertical/Trigen Holdings, LLC and Brian A. Markison (incorporated by reference to Exhibit 10.32 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.35+	Employment Agreement, dated December 16, 2013, by and between Vertical/Trigen Opco, LLC and James Schaub (incorporated by reference to Exhibit 10.33 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.36+	Employment Agreement, dated May 2, 2016, by and between Vertical/Trigen Opco, LLC and Tina deVries (incorporated by reference to Exhibit 10.34 to the Company's Registration Statement on Form S-1/A filed on October 17, 2018, Commission File No. 333-227357)
10.37+	Employment Agreement, dated December 16, 2013, by and between Vertical/Trigen Opco, LLC and Christopher Klein (incorporated by reference to Exhibit 10.35 to the Company's Annual Report on Form 10-K filed on March 19, 2020, Commission File No. 001-38709)
10.38+	Form of Initial Retainer Agreement (In Lieu of Equity Awards) with Osmotica Pharmaceuticals plc Directors (incorporated by reference to Exhibit 10.36 to the Company's Annual Report on Form 10-K filed on March 19, 2020, Commission File No. 001-38709)
10.39+	Form of Additional Annual Retainer Agreement (In Lieu of Equity Awards) with Osmotica Pharmaceuticals plc Directors (incorporated by reference to Exhibit 10.37 to the Company's Annual Report on Form 10-K filed on March 19, 2020, Commission File No. 001-38709)
21.1	Subsidiaries of Osmotica Pharmaceuticals plc
23.1	Consent of Ernst & Young LLP independent registered public accounting firm

31.1	Principal Executive Officer Certification Pursuant to Securities Exchange Act Rules13a-14 and 15d-14 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Principal Financial Officer Certification Pursuant to Securities Exchange Act Rules13a-14 and 15d-14 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Principal Executive Officer Certification Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Principal Financial Officer Certification Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

The Company agrees to furnish supplementally to the SEC a copy of any omitted schedule or exhibit to such agreement upon request by the SEC.

+ Indicates management contract or compensatory plan.

† Portions of this exhibit have been omitted pursuant to a confidential treatment request.

SIGNATURES

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

Osmotica Pharmaceuticals plc

Dated: March 30, 2021

By: /s/ Brian Markison
Brian Markison
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 indicated on March 30, 2021.

Signatures	Capacity in Which Signed
/s/ Brian Markison Brian Markison	Chief Executive Officer and Director (Chairman) (Principal Executive Officer)
/s/ Andrew Einhorn Andrew Einhorn	Chief Financial Officer (Principal Financial Officer and Accounting Officer)
/s/Michael DeBiasi Michael DeBiasi	Director
/s/ David Burgstahler David Burgstahler	Director
/s/ Gregory L. Cowan Gregory L. Cowan	Director
/s/ Joaquin Benes Joaquin Benes	Director
/s/ Sriram Venkataraman Sriram Venkataraman	Director
/s/ Juan Vergez Juan Vergez	Director
/s/ Fred Weiss Fred Weiss	Director

Avista Healthcare Partners, LP
65 East 55th Street, 18th Floor
New York, NY 10022
Attn: Ben Silbert

Altchem Limited:
Καραϊσκάκη, 6
CITY HOUSE
3032, Λεμεσός, Κύπρος:
Attn: Georgios Filippou

Orbit Co-Invest I, LLC:
c/o Paradox Capital Partners, LLC
1500 East Las Olas Blvd, 2nd Floor
Ft. Lauderdale, Florida 33301
Attn: Harvey Kesner

November 19, 2020

Ladies and Gentlemen:

Reference is hereby made to that certain Shareholders Agreement, dated as of October 17, 2018, among Avista Healthcare Partners, LP (as successor to each of ACP Holdco (Offshore), L.P. and ACP III AIV, L.P., "Avista Healthcare"), Osmotica Pharmaceuticals plc ("Osmotica"), Altchem Limited ("Altchem") and the other parties thereto (as amended from time to time, the "Shareholders Agreement"). Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Shareholders Agreement. References to Sections set forth herein are references to sections of the Shareholders Agreement, unless the context requires otherwise.

WHEREAS, on the date hereof and concurrently with the execution of this letter agreement, Avista Capital Partners III GP, LP, Osmotica, Orbit I (as defined below), SDK VC Pharma Holding Corp. ("SDK"), Steven Squashic, Kevin Hudy and David Purdy are entering into a letter agreement relating to SDK's interest in and management of Orbit I (the "Orbit I Letter Agreement");

WHEREAS, the parties to this letter agreement wish to amend the Shareholders Agreement to remove Orbit Co-Invest I LLC ("Orbit I") as a party to the Shareholders Agreement; and

WHEREAS Section 7.03 of the Shareholders Agreement provides that the Shareholders Agreement may be amended by an instrument in writing executed by (i) Osmotica, (ii) Avista Healthcare and (iii) Altchem.

In consideration of the mutual covenants and agreements set forth herein, and in the Shareholders Agreement, the parties hereto, intending to be legally bound, agree as follows:

1. Amendment of Shareholders Agreement. Upon the execution of this letter agreement by each of the parties hereto, the Shareholders Agreement is hereby amended in accordance with Section 7.03 thereof as follows:

(a) The preamble of the Shareholders Agreement is hereby deleted and replaced with the following:

> "THIS SHAREHOLDERS AGREEMENT (this "***Agreement***"), dated as of October 17, 2018, is entered into by and among Osmotica Pharmaceuticals plc, a public limited company incorporated under the laws of Ireland with registration number 607944 and registered office at 25-28 North Wall Quay, Dublin 1, Ireland (together with its successors, the "***Company***"), Avista Healthcare Partners, LP (the "***Avista Shareholder***"), Altchem Limited (the "***Altchem Shareholder***"), and each of Altchem, on the one hand, and the Avista Shareholder, collectively, on the other hand, a "***Sponsor***"), Orbit Co-Invest A-I LLC, a Delaware LLC ("***Orbit A-1***") and Orbit Co-Invest III, LLC ("***Orbit 3***", and together with Orbit A-1, the "***Co-Invest Vehicles***"), the shareholders listed on **Annex A** hereto as Management Shareholders, and the Persons who on becoming shareholders of the Company execute and deliver a Joinder Agreement, substantially as set forth on Annex A hereto (a "***Joinder Agreement***") (each of the foregoing a "***Shareholder***" and collectively, the "***Shareholders***")."

(b) The definition of "Avista Co-Invest Vehicle", set forth in Section 1.01 of the Shareholders Agreement is hereby deleted and replaced with the following:

> ""Avista Co-Invest Vehicle" means Orbit 3 and any other co-investment vehicle controlled by the Avista Shareholder or one of its controlled Affiliates and that holds Equity Securities from or after the Effective Date, collectively referred to as "Avista Co-Invest Vehicles"; provided, that the Avista Shareholder and their Permitted Transferees shall in no event be deemed to be an Avista Co-Invest Vehicle.""

(c) All other references to "Orbit Co-Invest I LLC" and "Orbit 1" in the Shareholders Agreement shall be deleted in their entirety, and from and after the date hereof Orbit I shall no longer be party or subject to the Shareholders Agreement in any respect.

2. Miscellaneous. This letter agreement, the Shareholders Agreement and the Orbit I Letter Agreement constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and preliminary agreements between the parties relating to the subject matter of this letter agreement. Except as expressly amended in Section 1 of this letter agreement, the Shareholders Agreement shall apply, control and continue in full force and effect with respect to the remaining parties thereto as originally constituted and is ratified and affirmed by and/or on behalf of each of the parties.

This letter agreement shall be construed in accordance with, and this letter agreement and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this letter agreement shall be governed by, the Law of the State of Delaware, without regard to any conflicts of laws or choice of laws rules that may require application of another state's laws. This letter agreement may be executed in multiple counterparts or by facsimile or electronic (including by PDF) signatures, which signatures shall be effective to bind the parties. This letter agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns. Each of the parties hereto represents and warrants to each such other party that this letter agreement has been duly executed by each such party and constitutes a valid and binding obligation of each such party, enforceable in accordance with its terms, and that no consent or authorization of any other Person is required or necessary to said party's performance of the terms of this letter agreement. If any provision of this letter agreement or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable under applicable Law, the remaining provisions of this letter agreement shall be interpreted so as best to reasonably effect the intent of the parties.

[*Signature pages follow*]

Please acknowledge your agreement to the foregoing by countersigning this letter agreement in the space provided below and returning it to the undersigned.

Very truly yours,

OSMOTICA PHARMACEUTICALS PLC
By: _____
Name: Christopher Klein
Title: Secretary

ACCEPTED AND AGREED

ALTCHEM LIMITED

By: _____
Name: Georgios Filippou
Title: Director

AVISTA HEALTHCARE PARTNERS, LP
By: Avista Healthcare Partners GP, Ltd.,
Its: General Partner

By: _____
Name: Ben Silbert
Title: Authorized Representative

ORBIT CO-INVEST I, LLC

By: _____
Name:
Title:

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following description sets forth certain material terms and provisions of Osmotica Pharmaceuticals plc (the "Company", "us", "we", or "our") securities that are registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The following is a summary of some of the terms of our ordinary shares based on our Articles of Association. The following summary is subject to, and is qualified in its entirety by reference to, the provisions of our Articles of Association, which is an exhibit to the Annual Report on Form 10-K to which this description is an exhibit.

Organization

We are an Irish private company with limited liability. We were organized in Ireland on July 13, 2017 under the name Lilydale Limited with registered number 607944. Effective May 1, 2018, we were renamed Osmotica Pharmaceuticals Limited. On July 31, 2018, Osmotica Pharmaceuticals Limited re- registered under the Irish Companies Act of 2014 as a public limited company and was renamed Osmotica Pharmaceuticals plc. Our affairs are governed by our Constitution, including our Articles of Association, and Irish law.

Objective

As provided by and described in our Memorandum of Association, our principal objective is to carry on the business of a holding company and all associated related activities and to carry on various activities associated with that objective.

Share Capital

Our authorized share capital is $4,400,000 and €25,000, divided into 400,000,000 ordinary shares with a nominal value of $0.01 per share, 40,000,000 Preferred Shares with a nominal value of $0.01 per share and 25,000 Euro Deferred Shares with a nominal value of €1.00 per share.

We may issue shares subject to the maximum authorized share capital contained in our Constitution. The authorized share capital may be increased or reduced (but not below the number of issued ordinary shares, preferred shares and Euro deferred shares, as applicable) by a resolution approved by a simple majority of the votes of our shareholders cast at a general meeting (referred to under Irish law as an "ordinary resolution") (unless otherwise determined by the directors). The shares comprising our authorized share capital may be divided into shares of any nominal value.

The rights and restrictions to which our ordinary shares are subject are prescribed in our Articles of Association. Our Articles of Association entitle our board of directors, without shareholder approval, to determine the terms of the preferred shares issued by us. The preferred shares may be preferred as to dividends, rights upon liquidation or voting in such manner as our board of directors may resolve. The preferred shares may also be redeemable at the option of the holder of the preferred shares or at our option, and may be convertible into or exchangeable for shares of any other class or classes of our share capital, depending on the terms of issue of such preferred shares.

Irish law does not recognize fractional shares held of record. Accordingly, our Articles of Association does not provide for the issuance of fractional shares, and our official Irish register does not reflect any fractional shares.

Whenever an alteration or reorganization of our share capital would result in any of our shareholders becoming entitled to fractions of a share, our board of directors may, on behalf of those shareholders that would

become entitled to fractions of a share, arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale in due proportion among the shareholders who would have been entitled to the fractions.

Transfer and Registration of Shares

Our share register is maintained by our transfer agent. Registration in this share register will be determinative of membership in us. Any of our shareholders who only hold ordinary shares beneficially will not be the holder of record of such ordinary shares. Instead, the depository or other nominee will be the holder of record of such shares. Accordingly, a transfer of ordinary shares from a person who holds such ordinary shares beneficially to a person who will also hold such ordinary shares beneficially through the same depository or other nominee will not be registered in our official share register, as the depository or other nominee will remain the holder of record of such ordinary shares.

A written instrument of transfer will be required under Irish law in order to register on our official share register any transfer of ordinary shares (i) from a person who holds such ordinary shares directly to any other person or (ii) from a person who holds such ordinary shares beneficially to another person who also will hold such ordinary shares beneficially where the transfer involves a change in the depository or other nominee that is the record owner of the transferred ordinary shares. An instrument of transfer will be required for a shareholder who directly holds ordinary shares to transfer those ordinary shares into his or her own broker account (or vice versa). Such instruments of transfer may give rise to Irish stamp duty, which must be paid prior to registration of the transfer on our official Irish share register. However, a shareholder who directly holds ordinary shares may transfer those ordinary shares into his or her own broker account (or vice versa) without giving rise to Irish stamp duty, provided that there is no change in the beneficial ownership of the ordinary shares as a result of the transfer and the transfer is not made in contemplation of a sale of the ordinary shares.

Accordingly, we strongly recommend that shareholders hold their shares through DTC (or through a broker who holds such shares through DTC).

Any transfer of our ordinary shares that is subject to Irish stamp duty will not be registered in the name of the buyer unless such stamp duty is paid and details of the transfer are provided to our transfer agent. We do not expect to pay any stamp duty on behalf of any acquirer of ordinary shares in our capital. We may, in our absolute discretion, pay (or cause one of our affiliates to pay) any stamp duty.

Our Articles of Association provide that, in the event of any such payment, we (i) may seek reimbursement from the transferor or transferee (at our discretion), (ii) may set-off the amount of the stamp duty against future dividends payable to the transferor or transferee (at our discretion) and (iii) will have a lien against any of our shares in respect of which we have paid stamp duty. Our Articles of Association grant our board of directors general discretion to decline to register an instrument of transfer without giving a reason. In addition, our board of directors may decline to register a transfer of shares unless a registration statement under the Securities Act is in effect with respect to the transfer or the transfer is exempt from registration.

The registration of transfers may be suspended at such times and for such periods, not exceeding 30 days in any year, as our board of directors may from time to time determine (except as may be required by law).

Issuance of Shares

We have the authority, pursuant to our Articles of Association, to increase our authorized but unissued share capital by ordinary resolution by creating additional shares of any class or series. An ordinary resolution of our company requires more than 50% of the votes cast at a shareholder meeting by our shareholders entitled to vote at that meeting. As a matter of Irish law, the board of directors of a company may issue authorized but unissued new shares without shareholder approval once authorized to do so by the Articles of Association of the company or by an ordinary resolution adopted by the shareholders at a general meeting. The authority conferred can be granted for a maximum period of five years, at which point it must be renewed by the shareholders by an ordinary resolution. Because of this requirement of Irish law, our Articles of Association authorize our board of directors to issue new shares up to the amount of our authorized but unissued share capital without shareholder approval for a period of

five years from the date our Articles of Association were adopted. We expect that we will seek to renew such general authority at an annual general meeting before the end of that five-year period. Our Articles of Association authorize our board of directors, without shareholder approval, to determine the terms of any class of preferred shares issued by us.

No Share Certificates

We do not intend to issue share certificates unless (i) certificates are required by law, any stock exchange, a recognized depository, any operator of any clearance or settlement system or the terms of issue of any class or series of our shares or (ii) a holder of our ordinary shares applies for share certificates evidencing ownership of our shares.

Under our Articles of Association, holders of our ordinary shares have no right to certificates for their ordinary shares, except on request and on such terms as our board of directors, at its sole discretion, determines.

Holders' rights to request certificates for ordinary shares are subject to any resolution of our board of directors determining otherwise.

No Sinking Fund

Our ordinary shares have no sinking fund provisions.

No Liability for Further Calls or Assessments

Our ordinary shares are fully paid up and are not subject to calls for any additional payments (non-assessable).

Pre-emption Rights, Share Warrants and Share Options

Under Irish law, certain statutory pre-emption rights apply automatically in favor of our shareholders when our shares are issued for cash. However, we have opted out of these pre-emption rights in our Articles of Association as permitted under Irish law for the maximum period permitted of five years from the date of adoption of the Articles of Association. This opt-out may be renewed every five years under Irish law by a special resolution of the shareholders. A special resolution requires not less than 75% of the votes cast by our shareholders at a meeting of shareholders. We expect that we will seek renewal of the opt-out at an annual general meeting within five years from the date on which our Articles of Association were adopted. If the opt-out expires and is not renewed, shares issued for cash must be offered to our pre-existing shareholders pro rata based on their existing shareholding before the shares can be issued to any new shareholders or pre-existing shareholders in an amount greater than their pro rata entitlements. The statutory pre-emption rights:

- generally do not apply where shares are issued for non-cash consideration;
- do not apply to the issuance of non-equity shares (that is, shares that have the right to participate only up to a specified amount in any dividend and capital distribution, which are sometimes referred to as non-participating shares); and
- do not apply to the issuance of shares pursuant to certain employee compensation plans, including the Osmotica Pharmaceuticals plc 2018 Incentive Plan.

The Irish Companies Act of 2014 (the “Irish Companies Act”) provides that directors may issue share warrants or options without shareholder approval once authorized to do so by the Articles of Association or an ordinary resolution of shareholders. This authority can be granted for a maximum period of five years, after which it must be renewed by the shareholders by an ordinary resolution. Our Articles of Association provide that our board of directors is authorized to grant, upon such terms as the board deems advisable, options to purchase (or commitments to issue at a future date) our shares of any class or series, and to cause warrants or other appropriate instruments evidencing such options or commitments to be issued. This authority under the articles will lapse after five years from the date our Articles of Association were adopted. We expect that we will seek renewal of this

authority at an annual general meeting before the end of that five-year period. The board of directors may issue ordinary shares upon exercise of warrants or options or other commitments without shareholder approval or authorization (up to the relevant authorized but unissued share capital). Statutory pre-emption rights will apply to the issuance of warrants and options issued by us unless an opt-out applies or shareholder approval for an opt-out is obtained in the same manner described directly above for our ordinary shares. We are subject to the Nasdaq Stock Market listing rules requiring shareholder approval of certain ordinary share issuances. The Irish Takeover Rules may be applicable in certain circumstances and can impact our ability to issue ordinary shares.

Under Irish law, we are prohibited from allotting shares without consideration. Accordingly, at least the nominal value of the shares issued underlying any restricted share award, restricted share unit, performance share award, bonus share or any other share-based grant must be paid pursuant to the Irish Companies Act.

Share Repurchases and Redemptions

Overview

Our Articles of Association provide that any share that we have agreed to acquire shall be deemed to be a redeemable share. Accordingly, for Irish law purposes, the repurchase of shares by us may technically be effected as a redemption of those shares as described below under "Repurchases and Redemptions." If our Articles of Association did not contain such provisions, repurchases by us would be subject to many of the same rules that apply to purchases of our shares by subsidiaries described below under "Purchases by Subsidiaries," including the shareholder approval requirements described below. Except where otherwise noted, when we refer elsewhere to repurchasing or buying back our shares, we are referring to the redemption of shares by us pursuant to the Articles of Association or the purchase of our shares by one of our subsidiaries, in each case in accordance with our Articles of Association and Irish law as described below.

Repurchases and Redemptions

Under Irish law, a company can issue redeemable shares and redeem them out of distributable reserves (which are described below under "Dividends") or (if the company proposes to cancel the shares on redemption) the proceeds of a new issue of shares for that purpose. The redemption of redeemable shares may only be made by a public limited company where the nominal value of the issued share capital that is not redeemable is not less than 10% of the nominal value of the total issued share capital of the company. All redeemable shares must also be fully paid and the terms of redemption of the shares must provide for payment on redemption. Redeemable shares may, upon redemption, be cancelled or held in treasury. Shareholder approval is not required to redeem our shares.

We may also be given authority by our shareholders to purchase our shares either on or off market, which would take effect on the same terms and be subject to the same conditions as applicable to purchases by our subsidiaries as described below. At an Extraordinary General Meeting of Shareholders held on August 29, 2019, the Company's independent shareholders (being shareholders other than Avista Capital Partners, Altchem Limited and each of their concert parties for the purposes of the Irish Takeover Rules) approved a waiver of mandatory offer obligations under Rule 37 of the Irish Takeover Rules to enable share buybacks or redemptions.

Our board of directors is also entitled to issue preferred shares that may be redeemed either at our option or the option of the shareholder, depending on the terms of such shares. See "—Share Capital." Repurchased and redeemed shares may be cancelled or held as treasury shares. The nominal value of treasury shares held by us at any time must not exceed 10% of the nominal value of our issued share capital. While we hold shares as treasury shares, we cannot exercise any voting rights in respect of those shares. Treasury shares may be cancelled by us or re-issued subject to certain conditions.

Purchases by Subsidiaries

Under Irish law, it may be permissible for an Irish or non-Irish subsidiary to purchase shares of a company. A general authority of the shareholders of a company is required to allow a subsidiary to make on-market purchases of the company's shares; however, as long as this general authority has been granted, no specific shareholder authority is required for a particular on-market purchase of the company's shares by a subsidiary. A company may elect to seek such general authority, which must expire no later than 18 months after the date on which it was granted, at the first annual general meeting of a company and at subsequent annual general meetings. For an off-market purchase by a subsidiary of a company, the proposed purchase contract must be authorized by special resolution of the shareholders of the company before the contract is entered into. The person whose shares are to be bought back cannot vote in favor of the special resolution and, for at least 21 days prior to the special resolution, the purchase contract must be on display or must be available for inspection by shareholders at the registered office of the company.

The number of shares held by the subsidiaries of a company at any time will count as treasury shares and will be included in any calculation of the permitted treasury share threshold of 10% of the nominal value of the issued share capital of the company. While a subsidiary holds shares of a company, it cannot exercise any voting rights in respect of those shares. The acquisition of the shares of a company by a subsidiary must be funded out of distributable reserves of the subsidiary.

Dividends

Under Irish law, dividends and distributions may only be made from distributable reserves. Distributable reserves, broadly, means the accumulated realized profits of a company, less accumulated realized losses of the company on a standalone basis. In addition, no dividend or distribution may be made unless the net assets of a company are not less than the aggregate of the company's called up share capital plus undistributable reserves and the distribution does not reduce the company's net assets below such aggregate. Undistributable reserves include a company's undenominated capital (effectively its share premium and capital redemption reserve) and the amount by which the company's accumulated unrealized profits, so far as not previously utilized by any capitalization, exceed the company's accumulated unrealized losses, so far as not previously written off in a reduction or reorganization of capital. The determination as to whether or not a company has sufficient distributable reserves to fund a dividend must be made by reference to “relevant accounts” of the company. The “relevant accounts” are either the last set of unconsolidated annual audited financial statements or unaudited financial statements prepared in accordance with the Irish Companies Act, which give a “true and fair view” of a company's unconsolidated financial position in accordance with accepted accounting practice in Ireland. These “relevant accounts” must be filed in the Companies Registration Office (the official public registry for companies in Ireland).

Consistent with Irish law, our Articles of Association authorize our board of directors to declare interim dividends without shareholder approval out of funds lawfully available for the purpose, to the extent they appear justified by profits and subject always to the requirement to have distributable reserves at least equal to the amount of the proposed dividend. Our board of directors may also recommend a dividend to be approved and declared by our shareholders at a general meeting. Our board of directors may direct that the payment be made by distribution of assets, shares or cash and no dividend declared or paid may exceed the amount recommended by the directors. We may pay dividends in any currency but, if we elect to pay dividends, we intend to pay such dividends in U.S. dollars. Our board of directors may deduct from any dividend or other moneys payable to any shareholder all sums of money, if any, due from the shareholder to us in respect of our ordinary shares.

Our board of directors is also authorized to issue shares in the future with preferred rights to participate in dividends declared by us. The holders of such preference shares may, depending on their terms, rank senior to the holders of our ordinary shares with respect to dividends. The 25,000 Euro deferred shares do not have any right to receive a dividend.

Bonus Shares

Under our Articles of Association, upon the recommendation of our board of directors, the shareholders by ordinary resolution may authorize the board to capitalize any amount credited to our undenominated capital, any of our profits available for distribution or any amount representing unrealized revaluation reserves, and use such amount for the issuance to shareholders of shares as fully paid bonus shares.

Lien on Shares, Calls on Shares and Forfeiture of Shares

Our Articles of Association provide that we have a first and paramount lien on every share for all debts and liabilities owed by any of our shareholders to us, whether presently due or not, payable in respect of such share. Subject to the terms of their allotment, directors may call for any unpaid amounts in respect of any shares to be paid, and if payment is not made within 14 days after notice demanding payment, we may sell the shares. These provisions are standard inclusions in the articles of association of an Irish company limited by shares such as ours and are only applicable to our shares that have not been fully paid up.

Consolidation and Division; Subdivision

Under our Articles of Association, we may, by ordinary resolution, divide any or all of our share capital into shares of smaller nominal value than its existing shares (often referred to as a share split) or consolidate any or all of our share capital into shares of larger nominal value than its existing shares (often referred to as a reverse share split).

Reduction of Share Capital

We may, by ordinary resolution, reduce our authorized but unissued share capital. We also may, by special resolution and subject to confirmation by the Irish High Court, reduce our issued share capital and any undenominated share capital.

General Meetings of Shareholders

We are required under Irish law to hold an annual general meeting within 18 months of incorporation and thereafter at intervals of no more than 15 months, provided that an annual general meeting is held in each calendar year and no more than nine months after our fiscal year-end. Any annual general meeting may be held outside Ireland, provided that technological means are provided to enable shareholders to participate in the meeting without leaving Ireland. Our Articles of Association include a provision requiring annual general meetings to be held within such time periods as required by Irish law.

The only matters that must, as a matter of Irish law, be transacted at an annual general meeting are the presentation of the annual profit and loss account, balance sheet and reports of the directors and auditors, the appointment of auditors and the fixing of the auditor's fees (or delegation of same). At any annual general meeting, only such business may be conducted as has been brought before the meeting (i) in the notice of the meeting, (ii) by or at the direction of the board of directors, (iii) in certain circumstances, at the direction of the Irish High Court, (iv) as required by law or (v) such business that the chairman of the meeting determines is properly within the scope of the meeting. In addition, subject to compliance with our Articles of Association, shareholders entitled to vote at an annual general meeting may make nominations of candidates for election to the board of directors and propose business to be considered thereat.

Our extraordinary general meetings may be convened (i) by our board of directors, (ii) on requisition of the shareholders holding the number of our shares prescribed by the Irish Companies Act (currently 10% of our paid-up share capital carrying voting rights), or (iii) in certain circumstances, on requisition of our auditors.

Extraordinary general meetings are generally held for the purposes of approving such of our shareholder resolutions as may be required from time to time. The business to be conducted at any extraordinary general meeting must be set forth in the notice of the meeting.

In the case of an extraordinary general meeting requisitioned by our shareholders, the proposed purpose of the meeting must be set out in the requisition notice of the meeting. The requisition notice can propose any business to be considered at the meeting. Under Irish law, upon receipt of this requisition notice, the board of directors has 21 days to convene the extraordinary general meeting of our shareholders to vote on the matters set out in the requisition notice. This meeting must be held within two months of receipt of the requisition notice. If the board does not proceed to convene the meeting within such 21-day period, the requisitioning shareholders, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, which meeting must be held within three months of the receipt of the requisition notice by the board.

If the board of directors becomes aware that our net assets are half or less of the amount of our called up share capital, the board must, not later than 28 days from the date that it learns of this fact, convene an extraordinary general meeting of our shareholders to be held not later than 56 days from such date.

This meeting must be convened for the purposes of considering what measures, if any, should be taken to address the situation.

At least 21 days' notice of any annual general meeting or general meeting at which a special resolution is proposed and 14 days in all other circumstances must be given to shareholders, each director and our auditors, under our Articles of Association.

Quorum for Shareholder Meetings

Our Articles of Association provide that no business shall be transacted at any general meeting unless a quorum is present. Under our Articles of Association, the presence, in person or by proxy, of one or more shareholders holding at least 50% of the voting power of our issued shares that carry the right to vote at the meeting constitutes a quorum for the conduct of any business at a general meeting.

The provisions of our Articles of Association relating to general meetings apply to general meetings of the holders of any class of shares except that the necessary quorum is determined by reference to the shares of the holders of the class. Accordingly, for general meetings of holders of a particular class of shares, a quorum consists of one or more shareholders present in person or by proxy holding not less than a majority of the issued and outstanding shares of the class entitled to vote at the meeting in question.

Voting

Generally

Holders of our ordinary shares are entitled to one vote per ordinary share held as of the record date for the meeting.

Our Articles of Association provide that all votes at a general meeting will be decided by way of a poll. Voting rights on a poll may be exercised by shareholders registered in our share register as of the record date for the meeting or by a duly appointed proxy of such a registered shareholder, which proxy need not be a shareholder. All proxies must be appointed in accordance with our Articles of Association. Our Articles of Association provide that our board of directors may permit the appointment of proxies by the shareholders to be notified to us electronically.

In accordance with our Articles of Association, our board of directors may, from time to time, cause us to issue preferred shares. These shares may have such voting rights, if any, as may be specified in the terms of such shares (e.g., they may carry more votes per share or may entitle their holders to a class vote on such matters as may be specified in the terms of the shares).

Treasury shares (i.e., shares held by us) and our shares held by our subsidiaries will not entitle their holders to vote at general meetings of shareholders.

Except where a greater majority is required by Irish law or our Articles of Association, any question proposed for consideration at any of our general meetings or of any class of shareholders will be decided by an ordinary resolution passed by a simple majority of the votes cast by shareholders entitled to vote at such meeting.

Irish law requires special resolutions of the shareholders at a general meeting to approve certain matters. A special resolution requires not less than 75% of the votes cast by shareholders at a meeting of shareholders.

Examples of matters requiring special resolutions include:

- amending our objects as contained in our Memorandum of Association;
- amending our Articles of Association (please see below in relation to an additional approval threshold for amending certain provisions of our Articles of Association);
- approving a change of name;
- authorizing the entry into a guarantee or the granting of security in connection with a loan, quasi loan or credit transaction in favor of a director or connected person of a director (which generally includes a family member or business partner of the director and any entity controlled by the director);
- opting out of pre-emption rights on the issuance of new shares;
- re-registering from a public limited company to a private company;
- purchasing of our own shares off-market;
- reducing issued share capital;
- resolving that we be wound up by the Irish courts;
- resolving in favor of a shareholders' voluntary winding-up;
- re-designating shares into different share classes;
- setting the re-issue price of treasury shares; and
- merging with other Irish companies or with companies incorporated in the European Economic Area (the "EEA"), as described below under "—Acquisitions."

Our Constitution requires the prior approval of holders of at least 75% in nominal value of our issued and outstanding ordinary shares which carry an entitlement to vote at a general meeting for amendments to any of the following: paragraph six of our Memorandum of Association and Articles 17, 67.1, 76, 90, 92, 112, 156-159 (inclusive), 194 and 196-198 (inclusive) of our Articles of Association.

Action by Written Consent

Any resolution or action required or permitted to be passed or taken by our shareholders may be effected only at a duly convened annual or extraordinary general meeting of our shareholders and may not be effected by any resolution or consent in writing by such shareholders.

Variation of Rights Attaching to a Class or Series of Shares

Under our Articles of Association and the Irish Companies Act, any variation of class rights attaching to our issued shares must be approved by an ordinary resolution passed at a general meeting of the shareholders of the affected class or series or with the consent in writing of the holders of a majority of the issued shares of that class of shares entitled to vote on such variation. The rights conferred upon the holder of any of our pre-existing issued shares shall not be deemed to be varied by the issuance of any preferred shares.

Record Dates

Our Articles of Association provide that our board of directors may set a record date for the purposes of determining which shareholders are entitled to notice of, or to vote at, a general meeting and the record date shall not be more than sixty (60) days prior to the date of the meeting. If no record date is fixed by the board of directors, the date immediately preceding the date on which notice of the meeting is deemed given under our Articles of Association will be the record date for such determination of members.

Shareholder Proposals

Under Irish law, there is no general right for a shareholder to put items on the agenda of an annual general meeting, other than as set out in the Articles of Association of a company. Under our Articles of Association, in addition to any other applicable requirements, for business or nominations to be properly brought by a shareholder before an annual general meeting or an extraordinary general meeting requisitioned by shareholders, such shareholder must have given timely notice thereof in proper written form to our corporate secretary.

To be timely for an annual general meeting, a shareholder's notice to our secretary as to the business or nominations to be brought before the meeting must be delivered to or mailed and received at our registered office not less than 90 days nor more than 120 days before the first anniversary of the notice convening our annual general meeting for the prior year. In the event that the date of the annual general meeting is changed by more than 30 days from the date contemplated at the time of the previous year's proxy statement, notice by the member must be so delivered by close of business on the day that is not earlier than 120 days prior to such annual general meeting and not later than the later of (a) 90 days prior to the day of the contemplated annual general meeting or (b) ten days after the day on which public announcement of the date of the contemplated annual general meeting is first made by us. In no event shall the public announcement of an adjournment or postponement of an annual general meeting commence a new time period (or extend any time period) for the giving of a shareholder's notice.

To be timely for business or nominations of a director at an extraordinary general meeting, notice must be delivered, or mailed and received not less than 90 days nor more than 120 days prior to the date of such extraordinary general meeting. If the first public announcement of the date of the extraordinary general meeting is less than 100 days prior to the date of the meeting, notice must be given by close of business ten days after the day on which the public announcement of the date of the extraordinary general meeting is first made by us.

For nominations to the board, the notice must include all information about the director nominee that is required to be disclosed by Securities and Exchange Commission (“SEC”) rules regarding the solicitation of proxies for the election of directors pursuant to Regulation 14A under the Exchange Act. For other business that a shareholder proposes to bring before the meeting, the notice must include a brief description of the business, the reasons for proposing the business at the meeting and a discussion of any material interest of the shareholder in the business. Whether the notice relates to a nomination to the board of directors or to other business to be proposed at the meeting, the notice also must include information about the shareholder and the shareholder's holdings of our shares. The chairman of the meeting shall have the power and duty to determine whether any business proposed to be brought before the meeting was made or proposed in accordance with these procedures (as set out in our Articles of Association), and if any proposed business is not in compliance with these provisions, to declare that such defective proposal shall be disregarded.

Shareholders' Suits

In Ireland, the decision to institute proceedings on behalf of a company is generally taken by the company's board of directors. In certain limited circumstances, a shareholder may be entitled to bring a derivative action on our behalf. The central question at issue in deciding whether a shareholder may be permitted to bring a derivative action is whether, unless the action is brought, a wrong committed against us would otherwise go un-redressed. The cause of action may be against a director, another person or both.

A shareholder may also bring proceedings against us in his or her own name where the shareholder's rights as such have been infringed or where our affairs are being conducted, or the powers of the board of directors are being exercised, in a manner oppressive to any shareholder or shareholders or in disregard of their interests as shareholders. Oppression connotes conduct that is burdensome, harsh or wrong. This is an Irish statutory remedy under Section 212 of the Irish Companies Act and the court can grant any order it sees fit, including providing for the purchase or transfer of the shares of any shareholder.

Our Articles of Association provide that all actions, other than those related to U.S. securities law, but including, without limitation, (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or employees to us or any of our shareholders, (iii) any action asserting a claim against us arising pursuant to any provision of Irish law or our Articles of Association, and (iv) any action to interpret, apply, enforce or determine the validity of our Articles of Association, shall be brought in the courts of Ireland, which have sole and exclusive jurisdiction to determine such matters.

Inspection of Books and Records

Under Irish law, our shareholders shall have certain rights to inspect our books and records, including the right to: (i) receive a copy of our Constitution and any act of the Irish Government that alters our Constitution; (ii) inspect and obtain copies of the minutes of general meetings of shareholders (including resolutions adopted at such meetings); (iii) inspect and receive a copy of the register of shareholders, register of directors and secretaries, register of directors' interests and other statutory registers maintained by us; (iv) receive copies of the most recent balance sheets and directors' and auditors' reports which have previously been sent to shareholders prior to an annual general meeting; and (v) receive balance sheets of any of our subsidiary companies that have previously been sent to shareholders prior to an annual general meeting for the preceding ten years. Our auditors also have the right to inspect all of our books and records. The auditors' report must be circulated to the shareholders with our Financial Statements (as defined below) at least 21 days before the annual general meeting, and such report must (if requested) be read to the shareholders at our annual general meeting. The Financial Statements referenced above mean our balance sheet, profit and loss account and, so far as they are not incorporated in the balance sheet or profit and loss account, any group accounts and the directors' and auditors' reports, together with any other document required by law to be annexed to the balance sheet. Our auditors also have the right to inspect all of our books, records and vouchers.

Acquisitions

There are a number of mechanisms for acquiring an Irish public limited company, including:

- a court-approved scheme of arrangement under the Irish Companies Act. A scheme of arrangement with one or more classes of shareholders requires a court order from the Irish High Court and the approval of: (i) more than 50% in number of the shareholders of each participating class or series voting on the scheme of arrangement, or (ii) representing 75% or more by value of the shares of such participating class or series held by the shareholders voting on the scheme of arrangement, in each case at the relevant meeting or meetings. A scheme of arrangement, if authorized by the shareholders of each participating class or series and the court, is binding on all of the shareholders of each participating class or series. Shares held by the acquiring party are not excluded from the tally of a vote on the scheme, but such shares may be considered to belong to a separate class for the purposes of approving the scheme, in which case the acquiring party's

shares would not be voted for the purposes of the separate class approval required from the remaining, non-acquiring shareholders;

- through a tender offer by a third party pursuant to the Irish Takeover Rules. Where the holders of 80% or more in value of a class of our shares (excluding any shares already beneficially owned by the offeror) have accepted an offer for their shares, the remaining shareholders in that class may be statutorily required to also transfer their shares, unless, within one month, the non-tendering shareholders can obtain an Irish court order otherwise providing. If the offeror has acquired acceptances of 80% of all of our shares but does not exercise this "squeeze out" right, the non-accepting shareholders also have a statutory right to require the offeror to acquire their shares on the same terms as the original offer, or such other terms as the offeror and the non-tendering shareholders may agree or on such terms as an Irish court, on application of the offeror or non-tendering shareholder, may order. If our shares were listed on the Euronext Dublin or another regulated stock exchange in the EU, this 80% threshold would be increased to 90%; and

- by way of a merger with a company incorporated in the EEA under the EU Cross-Border Mergers Directive (EU) 2019/2121 and the Irish European Communities (Cross-Border Mergers) Regulations 2008,(as amended), or with another Irish company under the Irish Companies Act. Such a merger must be approved by a special resolution and the Irish High Court. Shareholders also may be entitled to have their shares acquired for cash. See "—Appraisal Rights."

The approval of the board of directors, but not shareholder approval, is required for a sale, lease or exchange of all or substantially all of our assets, except that such a transaction between us and one of our directors or a person or entity connected to such a director may require shareholder approval.

Appraisal Rights

Generally, under Irish law, shareholders of an Irish company do not have statutory appraisal rights. If we are being merged as the transferor company with another EEA company under the EU Cross-Border Mergers Directive (EU) 2019/2121 and the Irish European Communities (Cross-Border Mergers) Regulations 2008 (as amended) or if we are being merged with another Irish company under the Irish Companies Act, (i) any of our shareholders who voted against the special resolution approving the merger or (ii) if 90% of our shares are held by the successor company, any other of our shareholders, may be entitled to require that the successor company acquire its shares for cash. In addition, a dissenting shareholder in a successful tender offer for an Irish company may, by application to the Irish High Court, object to the compulsory squeeze out provisions.

Disclosure of Interests in Shares

Under the Irish Companies Act, our shareholders must notify us if, as a result of a transaction, (i) the shareholder will be interested in 3% or more of our ordinary shares that carry voting rights or (ii) the shareholder who was interested in 3% or more of the shares will cease to be interested in our ordinary shares that carry voting rights. In addition, where a shareholder is interested in 3% or more of our ordinary shares, the shareholder must notify us of any alteration of its interest that brings its total holding through the nearest whole percentage number, whether an increase or a reduction. All such disclosures must be notified to us within two days of the event that gave rise to the requirement to notify. Where a person fails to comply with the notification requirements described above, no right or interest of any kind whatsoever in respect of any of our ordinary shares held by such person will be enforceable by such person, whether directly or indirectly, by action or legal proceeding. However, such person may apply to the Irish High Court to have the rights attaching to its ordinary shares reinstated. In addition to the disclosure requirement described above, under the Irish Companies Act, we may, by notice in writing, and must, on the requisition of shareholders holding 10% or more of our paid-up capital carrying voting rights, require a person whom we know or have reasonable cause to believe is, or at any time during the three years immediately preceding the date on which such notice is issued was, interested in shares comprised in our relevant share capital to: (i) indicate whether or not it is the case and (ii) where such person holds or has during that time held an interest in our ordinary shares, to give certain further information as may be required by us including particulars of such person or beneficial owner's past or present interests in our ordinary shares.

Any information given in response to the notice is required to be given in writing within such reasonable time as may be specified in the notice.

Where such a notice is served by us on a person who is or was interested in our ordinary shares and that person fails to give us any information required within the reasonable time specified, we may apply to a court for an order directing that the affected ordinary shares be subject to certain restrictions. Under the Irish Companies Act, the restrictions that may be placed on the ordinary shares by the court are as follows:

- any transfer of those ordinary shares or, in the case of unissued shares, any transfer of the right to be issued with ordinary shares and any issue of such ordinary shares, shall be void;
- no voting rights shall be exercisable in respect of those ordinary shares;
- no further shares shall be issued in respect of those ordinary shares or in pursuance of any offer made to the holder of those ordinary shares; and
- no payment shall be made of any sums due from us on those ordinary shares, whether in respect of capital or otherwise.

Where our ordinary shares are subject to these restrictions, the court may order the ordinary shares to be sold and may also direct that the ordinary shares shall cease to be subject to these restrictions.

In addition, persons or groups (within the meaning of the Exchange Act) beneficially owning 5% or more of our ordinary shares must comply with the reporting requirements under Section 13 of the Exchange Act.

Anti-Takeover Provisions

Shareholder Rights Plans and Share Issuances

Irish law does not expressly prohibit companies from issuing share purchase rights or adopting a shareholder rights plan as an anti-takeover measure. However, there is no directly relevant case law on the validity of such plans under Irish law.

Our Articles of Association allow our board of directors to adopt any shareholder rights plan upon such terms and conditions as the board deems expedient and in our best interest, subject to applicable law, including the Irish Takeover Rules and Substantial Acquisition Rules described below and the requirement for shareholder authorization for the issue of shares described above.

Subject to the Irish Takeover Rules described below and the Irish Companies Act, the board of directors also has the power to issue any of our authorized and unissued shares on such terms and conditions as it may determine to be in our best interest. It is possible that the terms and conditions of any issue of shares could discourage a takeover or other transaction that holders of some or a majority of our ordinary shares might believe to be in their best interest or in which holders of our ordinary shares might receive a premium for their shares over the then-market price of the shares.

Irish Takeover Rules and Substantial Acquisition Rules

A tender offer by which a third party makes an offer generally to our shareholders or a class of shareholders to acquire shares of any class conferring voting rights will be governed by the Irish Takeover Panel Act 1997 and the Irish Takeover Rules made thereunder and will be regulated by the Irish Takeover Panel (as well as being governed by the Exchange Act and the regulations promulgated thereunder). The “General Principles” of the Irish Takeover Rules and certain important aspects of the Irish Takeover Rules are described below. Takeovers by means of a scheme of arrangement are also generally subject to these regulations.

General Principles. The Irish Takeover Rules are based on the following General Principles that will apply to any transaction regulated by the Irish Takeover Panel:

- in the event of an offer, all classes of shareholders of the target company should be afforded equivalent treatment and, if a person acquires control of a company, the other holders of securities must be protected;
- the holders of securities in the target company must have sufficient time and information to allow them to make an informed decision regarding the offer. If the board of directors of the target company advises the holders of the securities with respect to the offer, it must advise on the effects of the implementation of the offer on employment, employment conditions and the locations of the target company's places of business;
- the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the offer;
- false markets must not be created in the securities of the target company or any other company concerned by the offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- an offeror can only announce an offer after ensuring that it can fulfill in full any cash consideration offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
- a target company may not be hindered in the conduct of its affairs for longer than is reasonable by an offer for its securities. This is a recognition that an offer will disrupt the day-to-day running of a target company, particularly if the offer is hostile and the board of the target company must divert its attention to resist the offer; and
- a “substantial acquisition” of securities (whether such acquisition is to be effected by one transaction or a series of transactions) will only be allowed to take place at an acceptable speed and shall be subject to adequate and timely disclosure.

Mandatory Offer. If an acquisition of shares were to increase the aggregate holding of an acquirer and its concert parties (which generally mean persons acting in concert with the acquirer) to shares carrying 30% or more of the voting rights in our shares, the acquirer and, depending on the circumstances, its concert parties would be mandatorily required (except with the consent of the Irish Takeover Panel) to make a cash tender offer for the remaining outstanding shares at a price not less than the highest price paid for the shares by the acquirer or its concert parties during the previous twelve months.

This requirement would also be triggered by an acquisition of shares by a person holding (together with its concert parties) shares carrying between 30% and 50% of the voting rights in us if the effect of such acquisition were to increase the percentage of the voting rights held by that person (together with its concert parties) by 0.05% within a twelve month period.

Voluntary Offer; Requirements to Make a Cash Offer and Minimum Price Requirements. A voluntary offer is a tender offer that is not a mandatory offer. If an offeror or any of its concert parties acquires any of our shares of the same class as the shares that are the subject of the voluntary offer within the period of three months prior to the commencement of the offer period, the offer price must be not less than the highest price paid for our shares of that class by the offeror or its concert parties during that period. The Irish Takeover Panel has the power to extend the “look back” period to twelve months if the Panel, having regard to the General Principles, believes it is appropriate to do so.

If the offeror or any of its concert parties has acquired our shares of the same class as the shares that are the subject of the voluntary offer (i) during the period of twelve months prior to the commencement of the offer period which represent 10% or more of the nominal value of the issued shares of that class or (ii) at any time after the commencement of the offer period, the offer shall be in cash (or accompanied by a full cash alternative) and the price per share shall be not less than the highest price paid by the offeror or its concert parties for shares (of that class) during, in the case of (i), the period of twelve months prior to the commencement of the offer period and, in the case of (ii), the offer period. The Irish Takeover Panel may apply this rule to an offeror who, together with its

concert parties, has acquired less than 10% of the nominal value of the issued shares of the class of shares that is the subject of the offer in the twelve-month period prior to the commencement of the offer period if the Panel, having regard to the General Principles, considers it just and proper to do so.

An offer period will generally commence from the date of the first announcement of an offer or proposed offer.

Substantial Acquisition Rules. The Irish Takeover Rules also contain rules governing substantial acquisitions of shares which restrict the speed at which a person may increase his or her holding of shares and rights over shares to an aggregate of between 15% and 30% of the voting rights in our shares. Except in certain circumstances, an acquisition or series of acquisitions of shares or rights over shares representing 10% or more of the voting rights in our shares is prohibited, if such acquisition(s), when aggregated with shares or rights already held, would result in the acquirer holding 15% or more but less than 30% of the voting rights in our shares and such acquisitions are made within a period of seven days. These rules also require accelerated disclosure of certain other acquisitions of shares or rights over shares relating to such holdings.

Frustrating Action. Under the Irish Takeover Rules, the board of directors is not permitted to take any action that might frustrate an offer for our shares during the course of an offer or at any earlier time at which the board has reason to believe an offer is or may be imminent, except as noted below. Potentially frustrating actions such as (i) the issue of shares, options or convertible securities, (ii) material disposals, (iii) entering into contracts other than in the ordinary course of business or (iv) any action, other than seeking alternative offers, which may result in the frustration of an offer, are prohibited during the course of an offer or at any time during which the board has reason to believe that an offer is or may be imminent. Exceptions to this prohibition are available where:

- the action is approved by our shareholders at a general meeting; or
- with the consent of the Irish Takeover Panel, where:
- the Irish Takeover Panel is satisfied that the action would not constitute a frustrating action;
- the holders of at least 50% of the voting rights state in writing that they approve the proposed action and would vote in favor of it at a general meeting;
- the action is in accordance with a contract entered into prior to the announcement of the offer (or prior to a time at which the board has reason to believe that an offer is or may be imminent); or
- the decision to take such action was made before the announcement of the offer (or prior to a time at which the board has reason to believe that an offer is or may be imminent) and has been either at least partially implemented or is in the ordinary course of business.

Insider Dealing. The Irish Takeover Rules also provide that no person, other than the offeror who is privy to confidential price-sensitive information concerning an offer made in respect of the acquisition of a company (or a class of its securities) or a contemplated offer, shall deal in relevant securities of the offeree during the period from the time at which such person first has reason to suppose that such an offer, or an approach with a view to such an offer being made, is contemplated to the time of (i) the announcement of such offer or approach or (ii) the termination of discussions relating to such offer, whichever is earlier.

For other provisions that could be considered to have an anti-takeover effect, see “—Transfer and Registration of Shares,” “—Issuance of Shares—Pre-emption Rights, Share Warrants and Share Options,” “—Voting —Generally,” “—Voting—Variation of Rights Attaching to a Class or Series of Shares,” “—Disclosure of Interests in Shares” and “—Corporate Governance.”

Business Combinations with Interested Shareholders

Our Articles of Association provide that, subject to certain exceptions, we may not engage in certain business combinations with any person, other than investment funds affiliated with Avista Capital Partners and

affiliates of Altchem Limited and their respective affiliates, that acquires beneficial ownership of 15% or more of our outstanding voting shares for a period of three years following the date on which such person became a 15% shareholder unless: (i) a committee of our disinterested directors approves the business combination; and (ii) in certain circumstances, the business combination is authorized by a special resolution of disinterested shareholders.

Corporate Governance

Generally

Our Articles of Association allocate authority over management of our Company to our board of directors. Our board of directors may then delegate management to committees of the board or such other persons as it thinks fit. Regardless of any delegation, the board of directors will remain responsible, as a matter of Irish law, for the proper management of our affairs. The board of directors may create new committees or change the responsibilities of existing committees from time to time.

Directors: Term and Appointment

Directors are elected or appointed at the annual general meeting or at any extraordinary general meeting called for that purpose until the next annual general meeting of the company. Each director is elected by the affirmative vote of a majority of the votes cast with respect to such director. In the event of a "contested election" of directors, directors shall be elected by the vote of a plurality of the votes cast at any meeting for the election of directors at which a quorum is present.

No person may be appointed director unless nominated in accordance with our Articles of Association. Our Articles of Association provide that, with respect to an annual or extraordinary general meeting of shareholders, nominations of persons for election to our board of directors may be made by (i) the affirmative vote of our board of directors or a committee thereof, (ii) any shareholder who is entitled to vote at the meeting and who has complied with the advance notice procedures provided for our Articles of Association, or (iii) with respect to election at an extraordinary general meeting requisitioned in accordance with section 178 of the Irish Companies Act, by a shareholder who holds ordinary shares or other shares carrying the general right to vote at general meetings of the company and who makes such nomination in the written requisition of the extraordinary general meeting in accordance with our Articles of Association and the Irish Companies Act relating to nominations of directors and the proper bringing of special business before an extraordinary general meeting.

Under our Articles of Association, our board of directors has the authority to appoint directors to the board, either to fill a vacancy or as an additional director. A vacancy on the board of directors created by the removal of a director may be filled by an ordinary resolution of the shareholders at the meeting at which such director is removed and, in the absence of such election or appointment, the remaining directors may fill the vacancy. The board of directors may fill a vacancy by an affirmative vote of a majority of the directors constituting a quorum. If there is an insufficient number of directors to constitute a quorum, the board may nonetheless act to fill such vacancies or call a general meeting of the shareholders. Under our Articles of Association, if the board fills a vacancy, the director's term expires at the next annual general meeting. If there is an appointment to fill a casual vacancy or an addition to the board, the total number of directors shall not at any time exceed the number of directors from time to time fixed by the board in accordance with the Articles of Association.

Removal of Directors

The Irish Companies Act provides that, notwithstanding anything contained in the Articles of Association of a company or in any agreement between that company and a director, the shareholders may, by an ordinary resolution, remove a director from office before the expiration of his or her term, provided that notice of the intention to move any such resolution be given by the requisitioning shareholders to the company not less than 28 days before the meeting at which the director is to be removed, and the director will be entitled to be heard at such meeting. The power of removal is without prejudice to any claim for damages for breach of contract (e.g., employment agreement) that the director may have against us in respect of his or her removal.

Directors' Duties

Our directors have certain statutory and fiduciary duties. All of our directors have equal and overall responsibility for our management (although directors who also serve as employees will have additional responsibilities and duties arising under their employment agreements and will be expected to exercise a greater degree of skill and diligence than non-executive directors). The principal fiduciary duties include the statutory and common law fiduciary duties of acting in good faith in the interests of our company and exercising due care and skill. Other statutory duties include ensuring the maintenance of proper books of account, having annual accounts prepared, having an annual audit performed, maintaining certain registers and making certain filings as well as the disclosure of personal interests. Particular duties also apply to directors of insolvent companies (for example, the directors could be liable to sanctions where they are deemed by the court to have carried on our business while insolvent, without due regard to the interests of creditors). For public limited companies like us, directors are under a specific duty to ensure that the corporate secretary is a person with the requisite knowledge and experience to discharge the role.

Conflicts of Interest

As a matter of Irish law, a director is under a fiduciary duty to avoid conflicts of interest. Irish law and our Articles of Association provide that: (i) a director may be a director of or otherwise interested in a company relating to us and will not be accountable to us for any remuneration or other benefits received as a result, unless we otherwise direct; (ii) a director or a director's firm may act for us in a professional capacity other than as auditor; and (iii) a director may hold an office or place of profit in us and will not be disqualified from contracting with us. If a director has a personal interest in an actual or proposed contract with us, the director must declare the nature of his or her interest and we are required to maintain a register of such declared interests that must be available for inspection by the shareholders. Such a director may vote on any resolution of the board of directors in respect of such a contract, and such a contract will not be voidable solely as a result.

Indemnification of Directors and Officers; Insurance

To the fullest extent permitted by Irish law, our Articles of Association confer an indemnity on our directors and officers. However, this indemnity is limited by the Irish Companies Act, which prescribes that an advance commitment to indemnify only permits a company to pay the costs or discharge the liability of a director or corporate secretary where judgment is given in favor of the director or corporate secretary in any civil or criminal action in respect of such costs or liability, or where an Irish court grants relief because the director or corporate secretary acted honestly and reasonably and ought fairly to be excused. Any provision whereby an Irish company seeks to commit in advance to indemnify its directors or corporate secretary over and above the limitations imposed by the Irish Companies Act will be void under Irish law, whether contained in its Articles of Association or any contract between the company and the director or corporate secretary. This restriction does not apply to our executives who are not directors, the corporate secretary or other persons who would be considered “officers” within the meaning of that term under the Irish Companies Act.

Our Articles of Association also contain indemnification and expense advancement provisions for persons who are not directors or our corporate secretary.

We are permitted under our Articles of Association and the Irish Companies Act to take out directors' and officers' liability insurance, as well as other types of insurance, for our directors, officers, employees and agents.

Additionally, we and certain of our subsidiaries have entered into agreements to indemnify our directors to the maximum extent allowed under applicable law. These agreements, among other things, provide that we indemnify our directors for certain expenses (including attorneys' fees), judgments, fines and settlement amounts reasonably incurred by such person in any action or proceeding, including any action by or in our right, on account of any services undertaken by such person on our behalf or that person's status as our director.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers or persons controlling the registrant pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Duration; Dissolution; Rights upon Liquidation

Our duration is unlimited. We may be dissolved at any time by way of either a shareholder's voluntary winding up or a creditors' winding up. In the case of a shareholder's voluntary winding up, we must be solvent and a special resolution of the shareholders is required. We may also be dissolved by way of court order on the application of a creditor, or by the Director of Corporate Enforcement in Ireland where our affairs have been investigated by an inspector and it appears from the report or any information obtained by the Director of Corporate Enforcement that we should be wound up.

The rights of the shareholders to a return of our assets on dissolution or winding up, following the settlement of all claims of creditors, may be prescribed in our Articles of Association or the terms of any shares issued by the board of directors from time to time. If the Articles of Association and terms of issue of our shares contain no specific provisions in respect of a dissolution or winding up then, subject to the shareholder priorities and the rights of any creditors, the assets will be distributed to shareholders in proportion to the paid-up nominal value of the shares held. Our Articles of Association provide that our ordinary shareholders may be entitled to participate in a winding up, and the method by which the property will be divided shall be determined by the liquidator, subject to a special resolution of the shareholders, but such rights of ordinary shareholders to participate may be subject to the rights of any preference shareholders to participate under the terms of any series or class of preference shares.

Transfer Agent and Registrar

The transfer agent and registrar for our ordinary shares is Computershare Trust Company, N.A.

Exchange Controls

There is no limitation imposed by Irish law or by our Articles of Association on the right of a non-resident to hold or vote our ordinary shares.

Listing

Our ordinary shares are listed on the Nasdaq Global Select Market under the symbol “OSMT.”

Exhibit 10.25

CONFORMED COPY

First Amendment dated as of November 10, 2016; ~~Second Amendment dated as of April 28, 2017 and Third Amendment dated as of December 21, 2017~~
Second Amendment dated as of April 28, 2017;
Third Amendment dated as of December 21, 2017;
Limited Consent dated as of May 21, 2020; and
Fourth Amendment dated as of December 12, 2020

CREDIT AGREEMENT

Dated as of February 3, 2016,

as amended by the First Amendment to Credit Agreement dated as of November 10, 2016, the Second Amendment to Credit Agreement dated as of April 28, 2017 ~~and~~, the Third Amendment to Credit Agreement dated as of December 21, 2017, the Limited Consent dated as of May 21, 2020 and the Fourth Amendment to Credit Agreement dated as of December 12, 2020

Among

OSMOTICA PHARMACEUTICAL CORP., ORBIT BLOCKER I LLC, ORBIT BLOCKER II LLC and VALKYRIE GROUP HOLDINGS, INC.

as the Borrowers,

OSMOTICA HOLDINGS US LLC,

as Holdings,

THE LOAN GUARANTORS PARTY HERETO,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders,

CIT BANK, N.A.
as Administrative Agent and Swingline Lender,

FIFTH THIRD BANK
as Issuing Bank,

CIT BANK, N.A., PACIFIC WESTERN BANK and FIFTH THIRD BANK
as Joint Bookrunners and Joint Lead Arrangers,

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND
as Syndication Agent

and

SILICON VALLEY BANK
as Documentation Agent

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SCHEDULES:

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CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of February 3, 2016 (this "**Agreement**"), by and among OSMOTICA PHARMACEUTICAL CORP., a Delaware corporation ("**OPC**"), ORBIT BLOCKER I LLC, a Delaware limited liability company ("**OBI**"), ORBIT BLOCKER II LLC, a Delaware limited liability company ("**OBII**"), VALKYRIE GROUP HOLDINGS, INC., a Delaware corporation ("**Valkyrie**" and together with OPC, OBI and OBII, the "**Borrowers**" and sometimes individually, a "**Borrower**"), OSMOTICA HOLDINGS US LLC, a Delaware limited liability company ("**Holdings**"), the other Loan Parties (as defined in Article 1), the Lenders (as defined in Article 1) and CIT BANK, N.A. ("**CIT**"), as administrative agent and collateral agent for the Lenders (in its capacity as administrative agent and collateral agent, the "**Administrative Agent**").

RECITALS

A. In connection with the transactions contemplated by the Acquisition (as defined below), certain holders of equity interests and/or options of Vertical/Trigen Holdings, LLC ("**Vertical/Trigen**"), a Delaware limited liability company (such holders, the "**Vertical Owners**"), including certain investment funds managed by Avista Capital Partners, L.P. (together with its affiliates and funds managed or advised by it or its controlled affiliates, the "**Sponsor**"), and certain holders of equity interests and/or options of Osmotica Holdings Corp Limited ("**Osmotica Cyprus**"), a Cyprus limited liability company (such holders, the "**Osmotica Owners**" and, collectively with the Vertical Owners, the "**Investors**"), have formed (i) Osmotica Holdings S.C.SP., a new holding company organized under the laws of Luxembourg ("**Parent**") and (ii) Holdings, a holding company wholly-owned by Parent, and (1) the Osmotica Owners are contributing 100% of the ownership interests of Osmotica Cyprus, Osmotica Kereskedelmi és Szolgáltató Korlátolt Felelősségű Társaság ("**Hungarian Holdings**"), a Hungarian corporation wholly-owned by Osmotica Cyprus, and of each subsidiary of Hungarian Holdings, including OPC (OPC, together with Osmotica Cyprus and its other subsidiaries, the "**Target**"), to Parent (the "**Osmotica Contribution**") and (2) the Vertical Owners are contributing 100% of the ownership interests of Vertical/Trigen and each of its subsidiaries (the "**Vertical Subsidiarie**s" and, together with Vertical/Trigen, the "**Vertical/Trigen Business**") to Parent (the "**Vertical/Trigen Contribution**" and, together with the Osmotica Contribution, collectively, the "**Acquisition**"), all as set forth in the Acquisition Agreement.

B. To fund a portion of the transactions contemplated by the Acquisition Agreement, (i) the Investors are contributing an amount in Cash equity (or, in the case of members of management and existing shareholders of the Target and its subsidiaries and the Vertical/Trigen Business, cash or non-cash) contributions (in the form of common equity, "qualified preferred" equity, PIK securities issued by the Parent (the "**PIK Notes**") or other equity), directly or indirectly, to Parent, which equity contribution, when combined with equity of any co-investment vehicle of the Sponsor and the holders of the Subordinated Notes and equity and/or profit interests of members of management and existing shareholders of Target and its subsidiaries and the Vertical/Trigen Business that is being retained, rolled over or converted in connection with the Acquisition, constitutes an aggregate amount not less than seventy percent (70%) (of which at least $132.5 million is contributed cash equity, including cash proceeds of the PIK Notes contributed as cash equity to Holdings by Parent) of the total consolidated pro forma debt and equity of Holdings and its subsidiaries on the Closing Date after giving effect to the Transactions but without giving effect to any increase in debt incurred to fund any original issue discount ("**OID**") or upfront fees pursuant to the "Flex Provisions" (as defined in the Fee Letter or the fee letter for

the Subordinated Notes) (the "**Equity Contribution**") and (ii) Parent is contributing to Holdings the Target and the Vertical/Trigen Business.

C. The Borrowers have requested that the Lenders extend credit in the form of (a) Term Loans on the Closing Date in an aggregate principal amount equal to $160,000,000 and (b) a Revolving Facility in an aggregate amount of $30,000,000, in each case, subject to increase as provided herein.

D. To consummate the Transactions, the Borrowers will also issue the Subordinated Notes on the Closing Date in an aggregate principal amount equal to $40,000,000.

E. The Lenders are willing to extend such credit to the Borrowers on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"**2016 Incremental Term Commitment**" means, with respect to each Lender, the commitment of such Lender to make the 2016 Incremental Term Loans under the First Amendment in an aggregate amount not to exceed the amount set forth opposite such Lender's name on the Commitment Schedule. The aggregate amount of the Lenders' 2016 Incremental Term Commitments on the First Amendment Effective Date (immediately prior to the incurrence of 2016 Incremental Term Loans on such date) is $117,500,000.

"**2016 Incremental Term Loan**" means an Incremental Term Loan made by the Lenders to the Borrowers pursuant to the First Amendment on the First Amendment Effective Date.

"**ABR**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"**ACH**" means automated clearing house transfers.

"**Acquisition**" has the meaning assigned to such term in the Recitals to this Agreement.

"**Acquisition Agreement**" means the Business Combination Agreement dated December 3, 2015 (together with the exhibits and disclosure schedules thereto) among, *inter alios*, Osmotica Cyprus and Vertical/Trigen, as amended, supplemental or otherwise modified in accordance with the terms thereof and hereof.

"**Additional Agreement**" has the meaning assigned to such term in Article 8.

"**Additional Commitments**" means any commitments added pursuant to Section 2.21, 2.22 or 9.02(c).

"**Additional Lender**" has the meaning assigned to such term in Section 2.21(b).

"**Additional Loans**" means the Additional Revolving Loans and Additional Term Loans.

"**Additional Revolving Commitments**" means any revolving commitments added pursuant to Section 2.21, 2.22 or 9.02(c)(ii).

"**Additional Revolving Facility**" means any revolving credit facilities added pursuant to Section 2.22 or 9.02(c)(ii).

"**Additional Revolving Loans**" means any revolving loans added pursuant to Section 2.21, 2.22 or 9.02(c)(ii).

"**Additional Term Commitments**" means any term commitments added pursuant to Sections 2.21, 2.22 or 9.02(c)(i).

"**Additional Term Facility**" means any term loan credit facilities added pursuant to Section 2.21, 2.22 or 9.02(c)(i).

"**Additional Term Loans**" means any term loans added pursuant to Section 2.21, 2.22 or 9.02(c)(i).

"**Adjustment Date**" means the date of delivery of the financial statements that are required to be delivered pursuant to Section 5.01.

"**Administrative Agent**" has the meaning assigned to such term in the preamble to this Agreement.

"**Administrative Questionnaire**" has the meaning assigned to such term in Section 2.21(d).

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Borrower or any Subsidiary) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of any Borrower or any Subsidiary, threatened in writing, against or affecting any Borrower or any of its Subsidiaries or any property of any Borrower or any of its Subsidiaries.

"**Affected Financial Institution**" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person. No Person shall be an "Affiliate" solely because it is an unrelated portfolio company of the Sponsor and none of the Administrative Agent, any Lender (other than an Affiliated Lender or a Debt Fund Affiliate) or any of their respective Affiliates shall be considered an Affiliate of Holdings or any subsidiary thereof.

"**Affiliated Lender**" means (a) any Non-Debt Fund Affiliate and (b) Holdings and/or any subsidiary of Holdings (but excluding any Debt Fund Affiliate).

"**After-Acquired CFC**" means any direct or indirect subsidiary of the Borrowers organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia that (i) is a "controlled foreign corporation" within the meaning of Section 957 of the Code and (ii) is acquired after the Closing Date.

"**Aggregate Revolving Credit Exposure**" means, at any time, the aggregate amount of the Lenders' Revolving Credit Exposures at such time.

"**Agreement**" has the meaning assigned to such term in the preamble to this Credit Agreement.

"**Alternate Base Rate**" means, for any day, a rate per annum equal to the highest of (a) the Federal Funds Effective Rate in effect on such day *plus* ½%, (b) to the extent ascertainable, the LIBO Rate (which rate shall be calculated based upon an Interest Period of three months) *plus* 1%, (c) the Prime Rate and (d) 2.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate, as the case may be, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate, as the case may be.

"**Applicable Percentage**" means, (a) with respect to any Term Lender for any Class, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Loans and unused Additional Commitments of such Term Lender under the applicable Class and the denominator of which is the aggregate outstanding principal amount of the Loans and unused Additional Commitments of all Term Lenders under the applicable Class and (b) with respect to any Revolving Lender for any Class, the percentage of the Total Revolving Credit Commitment for such Class represented by such Lender's Revolving Credit Commitment for such Class; provided that, when there is a Defaulting Lender, such Defaulting Lender's Applicable Percentage shall be subject to adjustment for purposes of Section 2.20 and otherwise herein pursuant to Section 2.20. In the case of clause (b), in the event the Revolving Credit Commitments for any Class shall have expired or been terminated, the Applicable Percentages of any Revolving Lender of such Class shall be determined on the basis of the Revolving Credit Exposure of the applicable Revolving Lenders of such Class, giving effect to any assignments and to any Revolving Lender's status as a Defaulting Lender at the time of determination.

"**Applicable Price**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Applicable Rate**" means:

(i) prior to the Third Amendment Effective Date, the "Applicable Rate" as defined in this Agreement prior to the Third Amendment Effective Date;

(ii) from and after the Third Amendment Effective Date, for each Class of Loans other than Term B Loans, for any day, with respect to any ABR Loan (including Swingline Loans) or LIBO Rate Loan, the applicable rate per annum set forth in the table below under the caption "ABR Spread" or "LIBO Rate Spread", as the case may be, based upon the Total Leverage Ratio as of last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01(a) or Section 5.01(b):

Total Leverage Ratio	**LIBO Rate Spread**	**ABR Spread**
Category 1		
Greater than 2.00 to 1.00	3.75%	2.75%
Category 2		

Equal to or less than 2.00 to 1.00	3.25%	2.25%

provided that for purposes of this clause (ii),

(a) until the first Adjustment Date following the consummation of a Qualifying IPO, the "Applicable Rate" shall be the applicable rate per annum set forth in the table above in Category 1;

(b) from and after the first Adjustment Date following the consummation of a Qualifying IPO, the Applicable Rate shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Total Leverage Ratio in accordance with the table above; and

(c) notwithstanding the foregoing clause (b), if financial statements are not delivered when required pursuant to clauses (a) or (b) of Section 5.01, the "Applicable Rate" shall be the rate per annum set forth in the table above in Category 1 until such financial statements are delivered in compliance with clauses (a) or (b) of Section 5.01, as applicable (and thereafter the pricing level otherwise determined in accordance with this definition shall apply); and

(iii) from and after the Third Amendment Effective Date, for Term B Loans, for any day, with respect to any ABR Loan, 3.25% per annum, and with respect to any LIBO Rate Loan, 4.25% per annum.

"**Approved Fund**" means, with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

"**Arrangers**" means CIT, Pacific Western Bank and Fifth Third Bank.

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.05), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent and the Borrower Representative.

"**Auction**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Auction Agent**" means (a) the Administrative Agent or any of its Affiliates or (b) any other financial institution or advisor engaged by the Borrower Representative (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Auction pursuant to the definition of "Dutch Auction".

"**Auction Amount**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Auction Notice**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Auction Party**" has the meaning set forth in the definition of "Dutch Auction".

"**Auction Response Date**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Availability Period**" means the period from and including the Closing Date to but excluding the earliest of (a) the date of termination of the Revolving Credit Commitments pursuant to Section 2.08(b), (b) the date of termination of the Revolving Credit Commitments of each Revolving Lender pursuant to Section 7.01 and (c) the Revolving Credit Maturity Date.

"**Available Amount**" means, at any time, an amount equal to, without duplication:

(a) the sum of:

(i) $5,000,000; *plus*

(ii) an amount, not less than zero, determined on a cumulative basis equal to (A) the amount of Excess Cash Flow for Holdings and its Subsidiaries for each completed Fiscal Year (commencing with the Fiscal Year ending December 31, 2018) ending on or after December 31, 2018 (but not less than zero for any such Fiscal Year) that is not required to be applied as a mandatory prepayment under Section 2.10(b)(i), without giving effect to Section 2.10(b)(~~iv~~v) (it being understood, for the avoidance of doubt, that solely for purposes of this definition, Excess Cash Flow for any Fiscal Year shall be deemed to be zero until the financial statements required to be delivered pursuant to Section 5.01(b) for such Fiscal Year, and the related Compliance Certificate required to be delivered pursuant to Section 5.01(c) for such Fiscal Year, have been received by the Administrative Agent), *less* (B) the amount of any voluntary prepayments of loans that the Borrower Representative elected to apply as a deduction to the calculation of the Excess Cash Flow payment under Section 2.10(b)(i) for such Fiscal Year; *plus*

(iii) the Net Proceeds received as Cash equity by Holdings from equity issuances of Capital Stock of Holdings after the Closing Date (other than from any Subsidiary and other than any amounts constituting a Cure Amount, Net Proceeds of issuances of Disqualified Capital Stock and equity proceeds that fund Permitted Acquisitions pursuant to clause (c) of the definition thereof, Restricted Payments pursuant to Section 6.04(b)(ii) or Section 6.04(h) or Restricted Debt Payments pursuant to clause (A) of Section 6.05(d)), in each case, during the period from and including the day immediately following the Closing Date through and including such time; *plus*

(iv) the amount of any Cash capital contributions made to the common equity of Holdings after the Closing Date or other Net Proceeds of issuances of Capital Stock (in each case other than any amounts constituting a Cure Amount, Net Proceeds of issuances of Disqualified Capital Stock and equity proceeds that fund Permitted Acquisitions pursuant to clause (c) of the definition thereof, Restricted Payments pursuant to Section 6.04(b)(ii) or Section 6.04(h) or Restricted Debt Payments pursuant to clause (A) of Section 6.05(d)) and received as Cash equity by Holdings or any Specified Loan Party (in each case other than from any Subsidiary), in each case, during the period from and including the day immediately following the Closing Date through and including such time; *plus*

(v) the aggregate principal amount of any Indebtedness or Disqualified Capital Stock (other than equity proceeds that fund Permitted Acquisitions pursuant to clause (c) of the definition thereof, Restricted Payments pursuant to Section 6.04(b)(ii) or Restricted Debt Payments pursuant to clause (A) of Section 6.05(d)), in each case, of any

Subsidiary issued after the Closing Date (other than Indebtedness or such Disqualified Capital Stock issued to a Subsidiary), which has been converted into or exchanged for Capital Stock of any Subsidiary or any Parent Company that does not constitute Disqualified Capital Stock, together with the fair market value of any Cash Equivalents and the fair market value (as reasonably determined by the Borrower Representative) of any property or assets received by any Subsidiary upon such exchange or conversion, in each case, during the period from and including the day immediately following the Closing Date through and including such time; *plus*

(vi) the Net Proceeds in the form of Cash received by any Subsidiary during the period from and including the day immediately following the Closing Date through and including such time in connection with the Disposition to a Person (other than any Subsidiary) of any Investment made pursuant to Section 6.03(r); *plus*

(vii) to the extent not already reflected as a return of capital with respect to such Investment for purposes of determining the amount of such Investment, the net proceeds (if positive) in the form of Cash received by any Subsidiary during the period from and including the day immediately following the Closing Date through and including such time in connection with Cash returns, Cash profits, Cash distributions and similar Cash amounts, including Cash principal repayments of loans, in each case received in respect of any Investment made pursuant to Section 6.03(r) (in an amount not to exceed the original amount of such Investment); *plus*

(viii) an amount equal to the sum of (A) the amount of any Investments by any Subsidiary pursuant to Section 6.03(r) in any Unrestricted Subsidiary (in an amount not to exceed the original amount of such Investment) that has been re-designated as a Subsidiary or has been merged, consolidated or amalgamated with or into, or is liquidated into, any Subsidiary and (B) the fair market value (as reasonably determined by the Borrower Representative) of the property or assets of any Unrestricted Subsidiary representing Investments made pursuant to Section 6.03(r) that have been transferred, conveyed or otherwise distributed (in an amount not to exceed the original amount of the Investment in such Unrestricted Subsidiary) to any Subsidiary, in each case, during the period from and including the day immediately following the Closing Date through and including such time; *plus*

(ix) the amount of any Declined Proceeds; *minus*

(b) an amount equal to the sum of (i) Restricted Payments made pursuant to Section 6.04(c), *plus* (ii) Restricted Debt Payments made pursuant to Section 6.05(e), *plus* (iii) Investments made pursuant to Section 6.03(r), in each case, made after the Closing Date and prior to such time, or contemporaneously therewith.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable ~~EEA~~ Resolution Authority in respect of any liability of an ~~EEA~~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, regulation rule or requirement 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).

"**Banking Services**" means each and any of the following bank services provided to any Loan Party (a) under any arrangement that is in effect on the Closing Date between any Loan Party, a counterparty that is the Administrative Agent, a Lender, an Arranger or an Affiliate of the Administrative Agent, a Lender or an Arranger as of the Closing Date or (b) under any arrangement that is entered into after the Closing Date by any Loan Party with any counterparty that is the Administrative Agent, a Lender, an Arranger, or an Affiliate of the Administrative Agent, a Lender or an Arranger at the time such arrangement is entered into: (i) commercial credit cards, (ii) stored value cards, (iii) purchasing cards, (iv) treasury management services (including depository, overdraft, controlled disbursement, ACH transactions, return items and interstate depository network services) and (v) any arrangements or services similar to the foregoing.

"**Banking Services Obligations**" means any and all obligations of the Loan Parties, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), in connection with Banking Services, in each case, that has been designated to the Administrative Agent in writing by the Borrower Representative as being a Banking Services Obligation for the purposes of the Loan Documents, it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article 8, Section 9.03 and Section 9.10 as if it were a Lender.

"**Bankruptcy Code**" means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**BHC Act Affiliate**" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Board**" means the Board of Governors of the Federal Reserve System of the United States of America.

"**Borrower**" has the meaning assigned to such term in the preamble to this Agreement.

"**Borrower Representative**" means Holdings.

"**Borrowing**" means any Loans of the same Type and Class made, converted or continued on the same date and, in the case of LIBO Rate Loans, as to which a single Interest Period is in effect.

"**Borrowing Request**" means a request by the Borrower Representative on behalf of one or more Borrowers for a Borrowing in accordance with Section 2.03 and substantially in the form attached hereto as Exhibit B or such other form as shall be reasonably acceptable to the Administrative Agent and the Borrower Representative.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that when used in connection with a LIBO Rate Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

"**Captive Insurance Subsidiary**" means any Subsidiary of any Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

"**Cash**" means money, currency or a credit balance in any Deposit Account.

"**Cash Equivalents**" means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (b) readily marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody's; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that has a capital surplus of not less than $500,000,000 (each Lender and each commercial bank referred to herein as a "**Cash Equivalent Bank**"); (e) shares of any money market mutual fund (i) whose investment guidelines restrict 95% of such fund's investments to the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $250,000,000, and (iii) has the highest rating obtainable from either S&P or Moody's; and (f) with respect to Foreign Subsidiaries, investments of the types described in clause (d) above issued by a Cash Equivalent Bank or any commercial bank of recognized international standing chartered in the country where such Foreign Subsidiary is domiciled having unimpaired capital and surplus of at least $500,000,000.

"**Change in Law**" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender, the Swingline Lender or any Issuing Bank (or, for purposes of Section 2.14(b), by any lending office of such Lender, such Swingline Lender or such Issuing Bank or by such Lender's or such Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement (other than any such request,

guideline or directive to comply with any law, rule or regulation that was in effect on the date of this Agreement). For purposes of this definition and Section 2.14, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and 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; provided that increased costs as a result of any Change in Law pursuant to clauses (x) and (y) above shall only be reimbursable by the Borrowers to the extent the applicable Lender is generally requiring reimbursement therefor from similarly situated borrowers under comparable syndicated credit facilities.

"**Change of Control**" means, after giving effect to the Transactions, the earliest to occur of:

(a) at any time prior to a Qualifying IPO, the Permitted Holders ceasing to beneficially own (within the meaning of Rule 13d-3 and Rule 13d-5 under the Exchange Act), either directly or indirectly, Capital Stock representing more than 50% of the total voting power of all of the outstanding voting stock of Holdings;

(b) at any time on or after a Qualifying IPO, the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act, but excluding any employee benefit plan and/or Person acting as the trustee, agent or other fiduciary or administrator therefor), other than one or more Permitted Holders, of Capital Stock representing more than the greater of (x) 35% of the total voting power of all of the outstanding voting stock of Holdings and (y) the percentage of the total voting power of all of the outstanding voting stock of Holdings owned, directly or indirectly, beneficially by the Permitted Holders;

(c) any Borrower ceases to be, directly or indirectly, a Wholly-Owned Subsidiary of Holdings;

(d) any "Change of Control" (or comparable term) under any Incremental Equivalent Debt (or any Refinancing Indebtedness in respect thereof) or in any document pertaining to any other Indebtedness with an aggregate outstanding principal amount in excess of the Threshold Amount;

(e) at any time prior to a Qualifying IPO, the Investors, in aggregate, cease to beneficially own, directly or indirectly, Capital Stock representing at least 75% of the total voting power of all of the outstanding voting stock of Holdings; or

(f) at any time prior to a Qualifying IPO, the Vertical Owners, in aggregate, cease to beneficially own, directly or indirectly, Capital Stock representing at least 33% of the total voting power of all of the outstanding voting stock of Holdings.

"**Charges**" has the meaning assigned to such term in Section 9.19.

"**CIT**" has the meaning assigned to such term in the preamble to this Agreement.

"**Class**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Term A Loans, Term B Loans, Revolving Loans, Swingline Loans or other loans or commitments added pursuant to Sections 2.21, 2.22 or 9.02(c).

"**Closing Date**" means February 3, 2016, which is the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"**Closing Date Guarantors**" means each Borrower, Holdings, Osmotica Cyprus, Hungarian Holdings and each of Holdings' direct and indirect wholly-owned subsidiaries existing on the Closing Date other than any such subsidiary that is an Excluded Subsidiary; provided that (x) from and after the date, if any, on which Osmotica BVI becomes a Subsidiary Guarantor in accordance with Section 5.13(c), Osmotica BVI shall be deemed to be a Closing Date Guarantor and (y) from and after the date on which RevitaLid becomes a Subsidiary Guarantor in accordance with Section 5.13(h), RevitaLid shall be deemed to be a Closing Date Guarantor.

"**Closing Date Material Adverse Effect**" means "Osmotica Material Adverse Effect" (as defined in the Acquisition Agreement (as in effect on December 3, 2015)).

"**Closing Date Term Commitment**" means, with respect to each Lender, the commitment of such Lender to make the Closing Date Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Lender's name on the Commitment Schedule, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Lenders' Closing Date Term Commitments on the Closing Date (immediately prior to the incurrence of Closing Date Term Loans on such date) is $160,000,000.

"**Closing Date Term Loan**" means a term loan made by the Lenders to the Borrowers on the Closing Date, pursuant to Section 2.01(a).

"**Cobb County Development Lease**" means the arrangement with the Development Authority of Cobb County, dated as of December 1, 2011, by and between the Development Authority of Cobb County and OPC, and including the Lease Agreement, dated as of December 1, 2011, by and between the Development Authority of Cobb County and OPC.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means any and all property of a Loan Party subject to a Lien under the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject to a Lien pursuant to the Collateral Documents in favor of the Administrative Agent, on behalf of itself and the other Secured Parties, to secure the Secured Obligations.

"**Collateral Documents**" means, collectively, (i) the Pledge and Security Agreement, (ii) each Mortgage, (iii) each Control Agreement, (iv) each Non-U.S. Collateral Document, (v) any supplement to any of the foregoing delivered to the Administrative Agent pursuant to Section 5.12 or Section 5.13 and (vi) each of the other instruments and documents granting a Lien upon the Collateral as security for payment of the Secured Obligations.

"**Combined Group**" means, collectively, Holdings, the Borrowers and each of their respective Subsidiaries.

"**Commercial Letter of Credit**" means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by any Borrower or any of its subsidiaries in the ordinary course of business of such Person.

"**Commitment**" means, with respect to each Lender, such Lender's Term Commitment and any Revolving Credit Commitment, as applicable, in effect as of such time.

"**Commitment Fee Rate**" means, (i) prior to the Third Amendment Effective Date, the "Commitment Fee Rate" as defined in this Agreement prior to the Third Amendment Effective Date and (ii) from and after the Third Amendment Effective Date, for each calendar quarter or portion thereof, the applicable rate per annum set forth below based upon the Total Leverage Ratio as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to clauses (a) or (b) of Section 5.01; provided that in the case of clause (ii) of this definition until the first Adjustment Date following the completion of one full Fiscal Quarter after the Third Amendment Effective Date, the "Commitment Fee Rate" shall be the applicable rate per annum set forth below in Category 1:

Total Leverage Ratio	**Commitment Fee Rate**
Category 1	
Greater than 2.00 to 1.00	0.50%
Category 2	
Equal to or less than 2.00 to 1.00	0.375%

The Commitment Fee Rate determined pursuant to clause (ii) of this definition shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Total Leverage Ratio in accordance with the table above; provided that if financial statements are not delivered when required pursuant to Section 5.01(a) or (b), the Commitment Fee Rate shall be the rate per annum set forth above in Category 1 until such financial statements are delivered in compliance with clauses (a) or (b) of Section 5.01, as applicable.

"**Commitment Increase Lender**" has the meaning assigned to such term in Section 2.21(e).

"**Commitment Letter**" means that certain Commitment Letter, dated as of December 3, 2015, by and among Vertical/Trigen, CIT and Pacific Western Bank.

"**Commitment Schedule**" means the Schedule attached hereto as Schedule 1.01(a).

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et. seq.) as amended from time to time, and any successor statute.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit D.

"**Confidential Information**" has the meaning assigned to such term in Section 9.13.

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by income (however denominated) or that are franchise Taxes or branch profit Taxes.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for Holdings and its Subsidiaries on a consolidated basis equal to the total of (a) Consolidated Net Income for such period *plus* (b) the sum, without duplication, of (to the extent deducted in calculating Consolidated Net Income, other than in respect of clauses (x), (xi), (xii), (xiv) and, to the extent applicable, (xv) below) the amounts of:

(i) combined consolidated interest expense (including (A) fees and expenses paid to the Administrative Agent in connection with its services hereunder, (B) other bank, administrative agency (or trustee) and financing fees, (C) costs of surety bonds in connection with financing activities and (D) commissions, discounts and other fees and charges owed with respect to letters of credit, bankers' acceptance or any similar facilities or financing and hedging agreements and amortization of debt discounts or premiums) and, to the extent not reflected in interest expense, expenses and deductions with respect to any obligation under any Hedge Agreement (including any termination payment) entered into for the purpose of hedging interest risk net of any income or gains on such hedging obligations;

(ii) (x) Taxes paid and provisions for Taxes based on income, profits or capital of such Person and its subsidiaries, including, in each case, federal, state, provincial, local, foreign, unitary, franchise, excise, property, withholding and similar Taxes, including any penalties and interest, *plus* (y) without duplication, any Tax Distributions paid or accrued during such period;

(iii) (x) any impairment charge or asset write-off charge and (y) total depreciation and amortization expense, including amortization of intangibles;

(iv) other non-Cash charges, losses and expenses; provided that if any such non-Cash charges, losses or expenses represent an accrual or reserve for potential Cash items in any future period, (A) the Borrowers may determine not to add back such non-Cash charge, loss or expense in the current period and (B) to the extent the Borrowers do decide to add back such non-Cash charge, loss or expense, the Cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA to such extent in the period in which such payment is made;

(v) (A) the Transaction Costs and the Transaction Costs (Third Amendment), (B) transaction fees, costs and expenses incurred (1) in connection with the consummation of any transaction (or any transaction proposed and not consummated) not prohibited under this Agreement, including the issuance of Capital Stock, Investments, acquisitions, Dispositions, recapitalizations, mergers, option buyouts or the incurrence, repayment, refinancing, amendment or modification of Indebtedness or similar transactions, (2) in connection with a Qualifying IPO and any secondary offerings (in each case, whether or not consummated), and costs associated with preparations for and implementation of compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs or (3) to the extent actually reimbursed or reimbursable by third parties pursuant to indemnification or reimbursement provisions or similar agreements or insurance; provided that in respect of any fee, cost, expense or deduction

incurred pursuant to clause (3) above, the Borrowers in good faith expects to receive reimbursement for such fee, cost, expense or deduction within the next four Fiscal Quarters;

(vi) the amount of any expense or deduction associated with any Subsidiary attributable to non-controlling interests or minority interests of third parties;

(vii) any amount of management, monitoring, consulting, transaction and advisory fees and any related expenses and indemnities actually paid by or on behalf of, or accrued by, any Borrower or any of its Subsidiaries to the Investors (or their Affiliates, management companies or directors) to the extent not prohibited by Section 6.10(f);

(viii) the amount of any one-time restructuring Cash charge or reserve, including in connection with (A) any acquisition permitted hereunder after the Closing Date and (B) the consolidation or closing of facilities during such period;

(ix) earn-out and contingent consideration obligations incurred or accrued in connection with any Permitted Acquisition or other Investment permitted pursuant to Section 6.03 and paid or accrued during such period and on similar acquisitions and investments completed prior to the Closing Date;

(x) expected cost savings, operating expense reductions and synergies (net of the amount of actual amounts realized) reasonably identifiable and factually supportable (in the good faith determination of Holdings) related to (A) the Transactions to the extent contemplated in the Sponsor Model and (B) after the Closing Date, permitted asset sales, acquisitions, Investments, Dispositions, operating improvements, restructurings, cost saving initiatives and certain other similar initiatives and Subject Transactions (other than pursuant to clause (a) of the definition thereof) (in each case calculated on a pro forma basis as though such cost savings, operating improvements and expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating improvements and expense reductions and synergies were realized during the entirety of such period); provided that (1) such cost savings, operating expense reductions, other operating improvements or synergies are reasonably expected to be realized within 18 months of the event giving rise thereto, (2) the aggregate amount of any such cost savings, operating expense reductions, other operating improvements or synergies under clause (x)(B) shall not exceed, together with any amounts added back pursuant to clauses (xi) and (xvii), 15% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs) and (3) a duly completed officer's certificate signed by a Responsible Officer of the Borrower Representative shall be delivered to the Administrative Agent certifying the provisions set forth in this clause (x);

(xi) costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions, integration, transition, facilities opening and pre-opening, business optimization and other restructuring costs, charges, accruals, reserves and expenses (including, without limitation, inventory optimization programs, software development costs and costs related to the closure or consolidation of facilities (without duplication of amounts in clause (viii) above) and curtailments, costs related to entry into new markets,

consulting and other professional fees, signing costs, retention or completion bonuses, relocation and recruitment expenses, severance payments, modifications to or losses on settlement of pension and post-retirement employee benefit plans, new systems design and implementation costs and project startup costs); provided that (x) the aggregate amount of any such costs, charges, accruals, reserves or expenses under this clause (xi) shall not exceed, together with any amounts added back pursuant to clauses (x)(B) and (xvii), 15% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs) and (y) a duly completed officer's certificate signed by a Responsible Officer of the Borrower Representative shall be delivered to the Administrative Agent certifying the provisions set forth in the this clause (xi);

(xii) business interruption insurance proceeds in an amount representing the earnings for the applicable period that such proceeds are intended to replace (whether or not received so long as the Borrowers in good faith expect to receive the same within the next four Fiscal Quarters);

(xiii) unrealized net losses in the fair market value of any arrangements under Hedge Agreements;

(xiv) extraordinary, unusual or non-recurring items (including, without limitation, costs of and payments of legal settlements, fines, judgments or orders); provided that (x) the aggregate amount of any such items under this clause (xiv) shall not exceed 20% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs) and (y) a duly completed officer's certificate signed by a Responsible Officer of the Borrower Representative shall be delivered to the Administrative Agent certifying the provisions set forth in this clause (xiv);

(xv) losses on sales or dispositions of assets outside the ordinary course of business (including, without limitation, asset retirement costs);

(xvi) effects of adjustments (including, without limitation, the effects of such adjustments pushed down to the Borrowers and their Subsidiaries) in the Borrowers' and their Subsidiaries' combined consolidated financial statements pursuant to GAAP (including, without limitation, in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof;

(xvii) any charges, costs or expenses incurred pursuant to launches of new products (but excluding any research and development expenses); provided that (x) the aggregate amount of any such costs, charges, accruals, reserves or expenses under this clause (xvii) shall not exceed, together with any amounts added back pursuant to clauses (x)(B) and (xi), 15% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs) and (y) a duly completed officer's certificate signed by a Responsible Officer of the Borrower

Representative shall be delivered to the Administrative Agent certifying the provisions set forth in the this clause (xvii);

(xviii) any costs or expenses incurred during the period from October 1, 2015 through the Closing Date relating to (1) any maintenance and operation of any aircraft owned by Holdings, any Borrower or any Subsidiary and (2) the sale of such aircraft;

(xix) other add-backs and adjustments reflected in the Sponsor Model and the PWC Quality of Earnings Report, including out of period normalization adjustments and updates provided to the Arrangers prior to December 3, 2015;

(xx) up to $2,000,000 in respect of the milestone payment made and expensed during the fourth fiscal quarter of 2015 in conjunction with licensing an ANDA for a Sodium Phenylacetate/Sodium Benzoate injection IV solution; and

(xxi) to the extent expensed, any portion of the upfront consideration paid by Osmotica Pharmaceutical Corp. in connection with the RevitaLid Purchase Agreement.

minus (c) to the extent such amounts increase Consolidated Net Income:

(i) other non-Cash items;

(ii) unrealized net gains in the fair market value of any arrangements under Hedge Agreements;

(iii) the amount added back to Consolidated Adjusted EBITDA pursuant to clause (b)(v)(B)(3) above (as described in such clause) to the extent such reimbursement amounts were not received within the time period required by such clause; and

(iv) the amount added back to Consolidated Adjusted EBITDA pursuant to clause (b)(xii) above (as described in such clause) to the extent such business interruption proceeds were not received within the time period required by such clause.

Notwithstanding anything to the contrary, it is agreed, that for the purpose of calculating the Total Leverage Ratio for any period that includes any Fiscal Quarter ended on December 31, 2016, March 31, 2017, June 30, 2017 or September 30, 2017, (i) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on December 31, 2016 shall be deemed to be $22,858,000, (ii) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on March 31, 2017 shall be deemed to be $28,884,000, (iii) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on June 30, 2017 shall be deemed to be $22,012,000, and (iv) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on September 30, 2017 shall be deemed to be $31,392,000, in each case, to the extent applicable, subject to adjustment on a Pro Forma Basis.

"**Consolidated Fixed Charge Coverage Ratio**" means the ratio, as of any date of determination, of:

(a)

(i) Consolidated Adjusted EBITDA for the applicable Test Period, *minus*

(ii) Consolidated Unfinanced Capital Expenditure for such Test Period, *minus*

(iii) (x) Taxes paid in cash during such Test Period based on income, profits or capital of Holdings and its subsidiaries, including, in each case, federal, state, provincial, local, foreign, unitary, franchise, excise and similar Taxes, including any penalties and interest, *plus* (y) without duplication, any Tax Distributions paid during such Test Period;

to

(b)

(i) Consolidated Interest Expense for such Test Period; *plus*

(ii) Consolidated Scheduled Indebtedness Payments for such Test Period; *plus*

(iii) Restricted Payments made by Holdings and paid in cash after the Third Amendment Effective Date during such Test Period pursuant to clauses (b)(iv) (other than any such Restricted Payment made to repurchase, redeem, retire or otherwise acquire the Capital Stock of any former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company or any member of the Combined Group), (c), (g) or (j) of Section 6.04; *plus*

(iv) any amount of management, monitoring, consulting, transaction and advisory fees and any related expenses and indemnities actually paid by or on behalf of, any Borrower or any of its Subsidiaries to the Investors (or their Affiliates, management companies or directors) during such Test Period;

in each case for the Test Period then most recently ended for which financial statements have been delivered pursuant to Section 5.01, in each case for Holdings and its Subsidiaries on a consolidated basis; provided that, for purposes of determining Consolidated Interest Expense and Consolidated Scheduled Indebtedness Payments for any Test Period ending prior to the first anniversary of the Third Amendment Effective Date, Consolidated Interest Expense and Consolidated Scheduled Indebtedness Payments for such Test Period shall be an amount equal to actual Consolidated Interest Expense or Consolidated Scheduled Indebtedness Payments, as applicable, for each full Fiscal Quarter commencing on or after January 1, 2018 and ending as of the last day of such Test Period, multiplied by (i) for the Test Period ending on March 31, 2018, 4.00, (ii) for the Test Period ending on June 30, 2018, 2.00 and (iii) for the Test Period ending on September 30, 2018, 1.33.

"**Consolidated Interest Expense**" means, for any period, the sum of (x) combined consolidated interest expense of Holdings and its Subsidiaries paid or payable in cash, net of cash interest income, of Holdings and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of Holdings and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit, bankers' acceptance or any similar facilities or financing and net cash costs under hedging agreements and (y) commitment fees paid pursuant to Section 2.11(a) and similar commitment, unused line or financing fees under Indebtedness described in

clauses (a) through (c) of such definition, for such Test Period; provided that there shall be excluded from Consolidated Interest Expense for any period:

(a) deferred financing costs, debt issuance costs, commissions, fees (including amendment and contract fees) and expenses and, in each case, the amortization thereof, and any other amounts of non-cash interest,

(b) the accretion or accrual of discounted liabilities and any prepayment premium or penalty during such period,

(c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under hedging agreements or other derivative instruments pursuant to FASB ASC 815,

(d) any cash costs associated with early termination in respect of hedging agreements for interest rates,

(e) Transaction Expenses or Transaction Expenses (Third Amendment),

(f) annual agency fees paid to the Administrative Agent,

(g) costs associated with obtaining hedge agreements, and

(h) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting in connection with the Transactions or any acquisition.

"**Consolidated Net Income**" means, for any period, the net income (or loss) of Holdings and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; provided that there shall be excluded, without duplication,

(a) the income (or loss) of any Person (other than a Subsidiary of Holdings) in which any other Person (other than Holdings or any of its Subsidiaries) has a joint interest, except, with respect to any income, to the extent of the amount of dividends or distributions or other payments (including any ordinary course dividend, distribution or other payment) paid in Cash (or to the extent converted into Cash) to Holdings or any of its Subsidiaries by such Person during such period,

(b) gains, income, losses, expenses or charges (less all fees and expenses chargeable thereto) attributable to any Dispositions of assets outside of the ordinary course of business (including, without limitation, asset retirement costs),

(c) gains, income, losses, expenses or charges from (i) extraordinary items and (ii) non-recurring or unusual items,

(d) any unrealized or realized net foreign currency translation or transaction gains or losses impacting net income (including currency remeasurements of Indebtedness and any net gains or losses resulting from Hedge Agreements for currency exchange risk associated with the above or any other currency related risk),

(e) any net income or loss (less all fees and expenses or charges related thereto) attributable to the early extinguishment of Indebtedness and obligations under Hedge Agreements,

(f) (i) any charges, costs, expenses, accruals or reserves incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholder agreement or any distributor equity plan or agreement and (ii) any charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Capital Stock held by management of any Parent Company, any Borrower or any of its respective Subsidiaries, in each case, to the extent that such charges, costs, expenses, accruals or reserves are funded with net Cash proceeds contributed to the common equity of Holdings as a capital contribution or as a result of the sale or issuance of Capital Stock (other than Disqualified Capital Stock) of Holdings,

(g) accruals and reserves that are established within 12 months after the Closing Date that are so required to be established as a result of the Transactions in accordance with GAAP,

(h) any (A) write-off or amortization made in such period of deferred financing costs and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness or (B) good will or other asset impairment charges, write-offs or write-downs,

(i) effects of adjustments (including, without limitation, the effects of such adjustments pushed down to Holdings and its Subsidiaries) in such Person's consolidated financial statements pursuant to GAAP (including, without limitation, in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or acquisition accounting, as the case may be, in relation to the Transactions or any consummated acquisition, the amortization or write-off of any amounts thereof or any non cash fair value lease accounting and (ii) the cumulative effect of changes in accounting principles, and

(j) solely for the purpose of determining the Available Amount, the net income for such period of any Subsidiary (other than any Subsidiary Guarantor), to the extent the declaration or payment of dividends or similar distributions by that Subsidiary of its net income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived; provided that Consolidated Net Income will be increased by the amount of dividends or other distributions or other payments actually paid in Cash (or to the extent converted into Cash) to Holdings or any Subsidiary thereof in respect of such period, to the extent not already included therein.

"**Consolidated Scheduled Indebtedness Payments**" means, for any period for Holdings and its Subsidiaries on a consolidated basis, the sum of all regularly scheduled payments of principal (and similar payments with respect to amounts required to appear as a liability on a balance sheet prepared in accordance with GAAP) on Indebtedness described in clauses (a) through (c) of such definition scheduled to be paid during such period. For purposes of this definition, payments of principal (and similar payments with respect to amounts required to appear as a liability on a balance sheet prepared in

accordance with GAAP) scheduled to be paid (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments (other than any such reduction that is made pro rata or in reverse order of maturity), (b) shall not include any voluntary or mandatory prepayments made pursuant to Section 2.10, and (c) shall be determined without giving effect to any contractual provision or Requirements of Law pursuant to which a scheduled date for payment or performance of an obligation, which date is not a Business Day, is extended to the first following day that is a Business Day.

"**Consolidated Secured Debt**" means, as to any Person, at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on any asset or property of any of Holdings or its Subsidiaries.

"**Consolidated Total Assets**" means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total assets" (or any like caption) on a combined consolidated balance sheet of Holdings and its Subsidiaries at such date.

"**Consolidated Total Debt**" means, at any date of determination, the aggregate principal amount of all debt for borrowed money, Capital Leases and purchase money Indebtedness of Holdings and its Subsidiaries at such date.

"**Consolidated Unfinanced Capital Expenditure**" means, for any Test Period, all expenditures during such Test Period of Holdings and its Subsidiaries, on a consolidated basis which, in accordance with GAAP, would be required to be capitalized and shown on the balance sheet of Holdings and its Subsidiaries, on a consolidated basis (including expenditures in respect of property subject to a Capital Lease), *minus* the sum of:

(i) any such expenditures financed with the Net Proceeds of the issuance or incurrence of long-term Indebtedness (other than revolving Indebtedness);

(ii) Net Proceeds of Dispositions received by Holdings and its Subsidiaries during such Test Period;

(iii) any such expenditures financed with the Net Proceeds of issuances of Capital Stock or contributions to the equity capital of Holdings or any Restricted Subsidiary during such Test Period;

(iv) any such expenditures financed with Net Insurance/Condemnation Proceeds, to the extent such expenditures relate to the replacement or repair of the property that was the subject of the casualty event or taking giving rise to such Net Insurance/Condemnation Proceeds;

(v) that portion of the purchase price of any Permitted Acquisition consummated during such Test Period that constitutes a capital expenditure of Holdings and its Subsidiaries, on a consolidated basis, under GAAP; and

(vi) expenditures made as a tenant during in leasehold improvements to the extent reimbursed in cash or compensated through rent reductions or other economic concessions by the relevant landlord.

"**Consolidated Working Capital**" means, as at any date of determination, the excess of Current Assets over Current Liabilities.

"**Contract Consideration**" has the meaning assigned to such term in the definition of "Excess Cash Flow".

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Control Agreement**" means, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among the Administrative Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account or owning such entitlement or contract, effective to grant "control" (within the meaning of Articles 8 and 9 under the applicable UCC or comparable foreign Requirement of Law) over such account to the Administrative Agent.

"**Covered Entity**" means any of the following:

(a) a "covered entity", as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank", as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI", as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Covered Party**" has the meaning assigned to such term in Section 9.22.

"**Credit Extension**" means each of (i) the making of a Revolving Loan or Swingline Loan or (ii) the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than any such amendment, modification, renewal or extension that does not increase the Stated Amount of the relevant Letter of Credit).

"**Credit Facilities**" means the Revolving Facility and the Term Facility.

"**Cure Amount**" has the meaning assigned to such term in Section 6.16(b).

"**Cure Right**" has the meaning assigned to such term in Section 6.16(b).

"**Current Assets**" means, at any time, the combined consolidated current assets (other than Cash and Cash Equivalents, the current portion of current and deferred Taxes based on income, permitted loans

made to third parties, assets held for sale, pension assets, deferred bank fees and derivative financial instruments) of Holdings and its Subsidiaries.

"**Current Liabilities**" means, at any time, the combined consolidated current liabilities of Holdings and its Subsidiaries at such time, but excluding, without duplication, (a) the current portion of any long-term Indebtedness, (b) outstanding revolving loans, (c) the current portion of interest expense (excluding consolidated interest expense that is due but unpaid), (d) the current portion of any Indebtedness attributable to Capital Leases, (e) the current portion of current and deferred Taxes based on income, (f) liabilities in respect of unpaid earnouts, (g) accruals relating to restructuring reserves to the extent permitted to be included in the definition of "Consolidated Adjusted EBITDA" pursuant to clause (xi) of the definition thereof, and (h) liabilities in respect of funds of third parties on deposit with Holdings and its Subsidiaries.

"**Cyprus Acknowledgments**" means the Cyprus Acknowledgments (First Amendment) and the Cyprus Acknowledgments (Third Amendment).

"**Cyprus Acknowledgments (First Amendment)**" means each of (a) the Deed of Acknowledgment of Secured Obligations under the Deed of Floating Charge Debenture among, Osmotica Cyprus, as chargor, and the Administrative Agent, as chargee, and (b) the Deed of Acknowledgment of Secured Obligations and Extension of Guarantee under the Cyprus Share Pledge among Holdings, as Pledgor, and the Administrative Agent, as pledgee and collateral agent, each dated as of the First Amendment Effective Date.

"**Cyprus Acknowledgments (Third Amendment)**" means each of (a) the Deed of Acknowledgment of Secured Obligations under the Deed of Floating Charge Debenture among, Osmotica Cyprus, as chargor, and the Administrative Agent, as chargee, and (b) the Deed of Acknowledgment of Secured Obligations and Extension of Guarantee under the Cyprus Share Pledge among Holdings, as Pledgor, and the Administrative Agent, as pledgee and collateral agent, each dated as of the Third Amendment Effective Date.

"**Cyprus Charge over Bank Accounts**" means a Cyprus law governed Deed of Charge of Bank Accounts among, Osmotica Cyprus, as chargor and the Administrative Agent, as chargee and collateral agent, and each related notice to be delivered by Osmotica Cyprus as chargor to each applicable account bank, in relation to the establishment of a charge in favor of the Administrative Agent over the applicable bank account, each in form and substance reasonably satisfactory to the Administrative Agent.

"**Cyprus Debenture**" means a Cyprus law governed Deed of Floating Charge Debenture, among, inter alios, Osmotica Cyprus, as chargor, and the Administrative Agent, as chargee, in form and substance reasonably satisfactory to the Administrative Agent.

"**Cyprus Share Pledge**" means the Cyprus Deed of Pledge of Share Certificates and Charge of Shares, among Holdings, as pledgor and the Administrative Agent, as pledgee and collateral agent dated on or about the date hereof.

"**Debt Fund Affiliate**" means any Affiliate of any Investor (other than a natural person) that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course and for which no personnel making investment decisions in respect of any equity fund which has a direct or indirect equity investment in Holdings, any Borrower or their Subsidiaries, makes (or has the right to make or participates with others in making) any investment decisions or has access to

information (other than information available to similarly situated non-affiliated lenders or prospective lenders) relating to the Borrowers.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Declined Proceeds**" has the meaning assigned to such term in Section 2.10(b)(~~v~~vi).

"**Default**" means any event or condition which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**Defaulting Lender**" means any Lender that has (a) defaulted in its obligations under this Agreement, including without limitation, to make a Loan or to fund its participation in a Letter of Credit or Swingline Loan required to be made or funded by it hereunder, in each case, within two Business Days in the case of the making of a Loan and three Business Days after the date such other obligation arose or such Loan, Letter of Credit or Swingline Loan was required to be made or funded unless such Lender notifies the Administrative Agent and the Borrower Representative 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 or Event of Default, shall be specifically identified in such writing) has not been satisfied, (b) notified the Administrative Agent, any Issuing Bank or Swingline Lender or a Loan Party in writing that it does not intend to satisfy any such obligation or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement, (c) failed, within three Business Days after the request of Administrative Agent or the Borrower Representative, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans; 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, (d) on or after the Closing Date, become (or any parent company thereof has become) insolvent or been determined by any Governmental Authority having regulatory authority over such Person or its assets, to be insolvent, or the assets or management of which has been taken over by any Governmental Authority or (e) on or after the Closing Date, (i) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment or (ii) become (or has a parent company that has become) the subject of a Bail-in Action, unless in the case of any Lender subject to this clause (e), the Borrower Representative and the Administrative Agent shall each have determined that such Lender intends, and has all approvals required to enable it (in form and substance satisfactory to each of the Borrower Representative and the Administrative Agent), to continue to perform its obligations as a Lender hereunder; provided that a Lender shall not be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Lender or its direct or indirect parent 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 (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.20(f)) upon delivery of written notice of such determination to the Borrower Representative, each Issuing Bank, the Swingline Lender and each Lender.

"**Deposit Account**" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"**Derivative Transaction**" means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided, that, no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management or managers or consultants of Holdings or its subsidiaries shall be a Derivative Transaction.

"**Designated Non-Cash Consideration**" means the fair market value (as determined by the Borrower Representative in good faith) of non-Cash consideration received by a Subsidiary in connection with a Disposition pursuant to Section 6.06(h) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower Representative, setting forth the basis of such valuation (which amount will be reduced by the amount of Cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to Cash or Cash Equivalents).

"**Designated PIK Intercompany Loan**" means an intercompany loan in the principal amount of $34,321,500.00 made by Hungarian Holdings to the Parent, on the Third Amendment Effective Date, as in effect on the Third Amendment Effective Date.

"**Designated PIK Notes**" means the Promissory Notes in an original aggregate principal amount of $25,000,000 (as such principal amount may be increased from time to time by the capitalization of accrued interest), dated as of February 3, 2016, made by Osmotica Holdings S.C.Sp., a Luxembourg special limited partnership, in favor of ACP Holdco (Offshore), L.P., ACP III AIV, L.P., Newstone Capital Partners II, L.P. and Altchem Limited.

"**Discount Range**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Disposition**" or "**Dispose**" means the sale, lease, sublease, or other disposition of any property of any Person.

"**Disqualified Capital Stock**" means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or

is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued, (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued, (c) contains any mandatory repurchase obligation or any other repurchase obligation at the option of the holder thereof, in whole or in part, which may come into effect prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued or (d) provides for the scheduled payments of dividends in Cash on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued; provided that any Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of a change in control, Qualifying IPO or a Disposition occurring prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions prior to the Termination Date.

Notwithstanding the preceding sentence, (A) if such Capital Stock is issued to any plan for the benefit of directors, officers, employees, members of management or managers or consultants or by any such plan to such directors, officers, employees, members of management or managers or consultants, in each case in the ordinary course of business of the Combined Group, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations and (B) no Capital Stock held by any future, present or former employee, director, officer, member of management, manager or consultant (or their respective Affiliates or Immediate Family Members) of a member of the Combined Group shall be considered Disqualified Capital Stock because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, stockholder agreement or similar agreement that may be in effect from time to time.

"**Disqualified Institution**" means (a) each Person set forth on a schedule furnished to the Arrangers (which schedule shall be made available to each Lender) prior to the date of this Agreement, (b) any Affiliate or representative of any Lender that is engaged as a principal primarily in private equity, mezzanine financing or venture capital, (c) any reasonably identifiable affiliate of any Person referred to in clause (a) above.

"**Disregarded Domestic Subsidiary**" means any direct or indirect Domestic Subsidiary of Holdings substantially all of the assets of which consist of Capital Stock or Security of one or more After-Acquired CFCs or Disregarded Domestic Subsidiaries, provided, that none of (i) Osmotica Pharmaceutical US LLC, (ii) Vertical/Trigen, (iii) the subsidiaries of Vertical/Trigen existing on or prior to the Closing Date, or (iv) any Subsidiary of Holdings which itself is a Closing Date Guarantor shall be a Disregarded Domestic Subsidiary.

"**Dollars**" or "**$**" refers to lawful money of the United States.

"**Domestic Subsidiary**" means any Subsidiary incorporated or organized under the laws of the United States, any State thereof or the District of Columbia.

"**Dutch Auction**" means an auction (an "**Auction**") conducted by an Affiliated Lender or a Debt Fund Affiliate (any such Person, the "**Auction Party**") in order to purchase any Class of Term Loans (or any Additional Term Loans, which for purposes of this definition shall be deemed to be a Class of Term Loans (and the holders thereof, Lenders)) in accordance with the following procedures; provided that no Auction Party shall initiate any Auction unless (I) at least five Business Days shall have passed since the consummation of the most recent purchase of Term Loans pursuant to an Auction conducted hereunder; or (II) at least three Business Days shall have passed since the date of the last Failed Auction which was withdrawn pursuant to clause (c)(i) below:

(a) Notice Procedures. In connection with an Auction, the Auction Party will provide notification to the Auction Agent (for distribution to the relevant Lenders) of the Class of Term Loans that will be the subject of the Auction (an "**Auction Notice**"). Each Auction Notice shall be in a form reasonably acceptable to the Auction Agent and shall (i) specify the maximum aggregate principal amount and Class of the Term Loans subject to the Auction, in a minimum amount of $10,000,000 and whole increments of $1,000,000 in excess thereof (or, in any case, such lesser amount of such Term Loans then outstanding or which is otherwise reasonably acceptable to the Auction Agent and the Administrative Agent (if not also the Auction Agent)) (the "**Auction Amount**"), (ii) specify the discount to par, which may be a range (the "**Discount Range**") of percentages of the par principal amount of the Term Loans subject to such Auction, that represents the range of purchase prices that the Auction Party would be willing to accept in the Auction, (iii) be extended, at the sole discretion of the Auction Party, to (x) each Lender and/or (y) each Lender with respect to any Term Loans on an individual Class basis and (iv) shall remain outstanding through the Auction Response Date. The Auction Agent will promptly provide each appropriate Lender with a copy of such Auction Notice and a form of the Return Bid to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m. on the date specified in such Auction Notice (or such later date as the Auction Party may agree to extend with the reasonable consent of the Auction Agent) (the "**Auction Response Date**").

(b) Reply Procedures. In connection with any Auction, each Lender holding Term Loans of the relevant Class of Term Loans subject to such Auction may, in its sole discretion, participate in such Auction and may provide the Auction Agent with a notice of participation (the "**Return Bid**") which shall be in a form reasonably acceptable to the Auction Agent, and shall specify (i) a discount to par (that must be expressed as a price at which it is willing to sell all or any portion of such Term Loans) (the "**Reply Price**"), which (when expressed as a percentage of the par principal amount of such Term Loans) must be within the Discount Range, and (ii) a principal amount of such Term Loans, which must be in whole increments of $1,000,000 (or, in any case, such lesser amount of such Term Loans of such Lender then outstanding or which is reasonably acceptable to the Auction Agent and the Administrative Agent (if not also the Auction Agent)) (the "**Reply Amount**"). Lenders may only submit one Return Bid per Auction but each Return Bid may contain up to three bids only one of which can result in a Qualifying Bid. In addition to the Return Bid, the participating Lender must execute and deliver, to be held in escrow by the Auction Agent, an Assignment and Assumption with the dollar amount of the Term Loans to be assigned to be left in blank, which amount shall be completed by the Auction Agent in accordance with the final determination of such Lender's Qualifying Bid pursuant to clause (c) below. Any Lender whose Return Bid is not received by the Auction Agent by the Auction Response Date shall be deemed to have declined to participate in the relevant Auction with respect to all of its Term Loans.

(c) Acceptance Procedures. Based on the Reply Prices and Reply Amounts received by the Auction Agent prior to the applicable Auction Response Date, the Auction Agent, in consultation with the Auction Party, will determine the applicable price (the "**Applicable Price**") for the Auction, which will be the lowest Reply Price for which the Auction Party can complete the Auction at the Auction Amount; provided that, in the event that the Reply Amounts are insufficient to allow the Auction Party to complete a purchase of the entire Auction Amount (any such Auction, a "**Failed Auction**"), the Auction Party shall either, at its election, (i) withdraw the Auction or (ii) complete the Auction at an Applicable Price equal to the highest Reply Price. The Auction Party shall purchase the relevant Term Loans (or the respective portions thereof) from each Lender with a Reply Price that is equal to or lower than the Applicable Price ("**Qualifying Bids**") at the Applicable Price; provided that if the aggregate proceeds required to purchase all Term Loans subject to Qualifying Bids would exceed the Auction Amount for such Auction, the Auction Party shall purchase such Term Loans at the Applicable Price ratably based on the principal amounts of such Qualifying Bids (subject to rounding requirements specified by the Auction Agent in its discretion). If a Lender has submitted a Return Bid containing multiple bids at different Reply Prices, only the bid with the lowest Reply Price that is equal to or less than the Applicable Price will be deemed the Qualifying Bid of such Lender (*e.g.*, a Reply Price of $100 with a discount to par of 1%, when compared to an Applicable Price of $100 with a 2% discount to par, will not be deemed to be a Qualifying Bid, while a Reply Price of $100 with a discount to par of 2.50% would be deemed to be a Qualifying Bid). The Auction Agent shall promptly, and in any case within five Business Days following the Auction Response Date with respect to an Auction, notify (I) the Borrower Representative of the respective Lenders' responses to such solicitation, the effective date of the purchase of Term Loans pursuant to such Auction, the Applicable Price, and the aggregate principal amount of the Term Loans and the tranches thereof to be purchased pursuant to such Auction, (II) each participating Lender of the effective date of the purchase of Term Loans pursuant to such Auction, the Applicable Price, and the aggregate principal amount and the tranches of Term Loans to be purchased at the Applicable Price on such date, (III) each participating Lender of the aggregate principal amount and the tranches of the Term Loans of such Lender to be purchased at the Applicable Price on such date and (IV) if applicable, each participating Lender of any rounding and/or proration pursuant to the second preceding sentence. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Borrower Representative and Lenders shall be conclusive and binding for all purposes absent manifest error.

(d) Additional Procedures.

(i) Once initiated by an Auction Notice, the Auction Party may not withdraw an Auction other than a Failed Auction. Furthermore, in connection with any Auction, upon submission by a Lender of a Qualifying Bid, such Lender will be obligated to sell the entirety or its allocable portion of the Reply Amount, as the case may be, at the Applicable Price.

(ii) To the extent not expressly provided for herein, each purchase of Term Loans pursuant to an Auction shall be consummated pursuant to procedures consistent with the provisions in this definition, established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the Borrower Representative.

(iii) In connection with any Auction, the Borrowers, the Borrower Representative and the Lenders acknowledge and agree that the Auction Agent may

require as a condition to any Auction, the payment of customary fees and expenses by the Auction Party in connection therewith as agreed between the Auction Party and the Auction Agent.

(iv) Notwithstanding anything in any Loan Document to the contrary, for purposes of this definition, each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon the Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; provided that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(v) The Borrowers, the Borrower Representative and the Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this definition by itself or through any Affiliate of the Auction Agent and expressly consent to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any purchase of Term Loans provided for in this definition as well as activities of the Auction Agent.

"**EEA**" means the European Economic Area.

"**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 member state of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Member State**" means any member states of the EEA.

"**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 (a) a Lender, (b) a commercial bank, insurance company, finance company, financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D, (c) any Affiliate of a Lender, (d) an Approved Fund of a Lender or (e) to the extent permitted under Section 9.05(g), any Affiliated Lender or any Debt Fund Affiliate; provided that in any event, "Eligible Assignee" shall not include (i) any natural person, (ii) any Disqualified Institution or (iii) except as permitted under Section 9.05(g), Holdings or any of its Subsidiaries or Affiliates.

"**Environmental Claim**" means any investigation, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual

or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all applicable current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other applicable requirements of Governmental Authorities and the common law relating to pollution or protection of the environment or natural resources, in any manner applicable to any Borrower or any of its Subsidiaries or any Facility.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any Loan Party or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Equity Contribution**" has the meaning assigned to such term in the Recitals to this Agreement.

"**Equivalent Managing Body**" (i) with respect to a manager managed limited liability company, the board of managers, (ii) with respect to a member managed limited liability company, the board of directors of its most direct corporate parent company and (iii) with respect to a partnership, the board of directors of the general partner to the extent such general partner is a corporation, or the Equivalent Managing Body of the general partner if such general partner is not a corporation.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member; and (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member.

"**ERISA Event**" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the 30-day notice period has been waived); (b) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) or Section 302 of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Borrower, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability on any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) of any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Multiemployer Plan if there is any potential liability therefor under Title IV of ERISA, or the receipt by any Borrower, any of its Subsidiaries or any of their respective

ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; or (h) the incurrence of liability or the imposition of a Lien pursuant to Section 436 or 430(k) of the Code or pursuant to ERISA with respect to any Pension Plan.

"**EU Bail-In Legislation Schedule**" means the ~~document described as such and~~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 assigned to such term in Article 7.

"**Excess Cash Flow**" means, for any Test Period ending on the last day of a Fiscal Year, an amount (if positive) equal to:

(a) the sum, without duplication, of the amounts for such period of the following:

(i) Consolidated Net Income for such period, *plus*

(ii) the amount of all non-Cash charges (including depreciation and amortization expense) deducted in arriving at such Consolidated Net Income, but excluding any non-Cash charges representing an accrual or reserve for potential Cash items in any future period and excluding amortization of all prepaid Cash items that were paid (or required to have been paid) in a prior period, *plus*

(iii) decreases, if any, in Consolidated Working Capital from the first day to the last day of such period (other than any such decreases arising from acquisitions completed during such period or the application of acquisition accounting), *plus*

(iv) the aggregate net amount of any non-Cash loss on dispositions of property during such period (other than dispositions in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income, *plus*

(v) Cash income or gains (actually received in Cash) of the type described in clauses (b), (c), (d) and (e) of the definition of "Consolidated Net Income", to the extent excluded from the calculation of Consolidated Net Income for such period pursuant to the definition thereof (except to the extent such income or gains consist of proceeds utilized in calculating Net Proceeds or Net Insurance/Condemnation Proceeds subject to Section 2.10(b)(ii)), *plus*

(vi) the amount of expenses deducted from Consolidated Net Income during such period in respect of expenditures made during any prior period for which a deduction from Excess Cash Flow was made in such period pursuant to clause (b) below, *plus*

(vii) the amount of expenses deducted from Consolidated Net Income during such period in respect of amounts deducted from Excess Cash Flow in any prior period pursuant to clause (b)(v)(y) below, *minus*

(b) the sum, without duplication, of the amounts for such period of the following:

(i) the amount of (A) all non-Cash credits, gains and income included in arriving at such Consolidated Net Income (including non-Cash gains on bargain purchases and excluding any such credit, gain or income representing the reversal of an accrual or reserve for a potential Cash item that reduced Consolidated Net Income in any prior period) and (B) all Cash expenses, charges and losses excluded in arriving at such Consolidated Net Income, *plus*

(ii) the aggregate amount actually paid in Cash by any Subsidiary during such period or after such period and prior to the relevant date of such Excess Cash Flow prepayment required by Section 2.10(b)(i) on account of capital expenditures (other than capital expenditures to the extent financed with long-term Indebtedness (other than revolving Indebtedness)), *plus*

(iii) the aggregate amount of all permanent repayments of principal of Indebtedness of any Subsidiary made in Cash during such period (other than (x) repayments made pursuant to the Existing Debt Refinancing, (y) repayments made with the proceeds of long-term Indebtedness (other than revolving Indebtedness) and (z) payments of (A) revolving indebtedness to the extent there is not an equivalent permanent reduction in commitments thereunder and (B) voluntary prepayments described in Section 2.10(b)(i)), *plus*

(iv) increases, if any, in Consolidated Working Capital from the last day of the prior period to the last day of such period, *plus*

(v) to the extent included, or not deducted in arriving at such Consolidated Net Income, the aggregate consideration actually paid in Cash (x) during such period or (y) at the option of the Borrowers after such period and prior to the relevant date of such Excess Cash Flow prepayment required by Section 2.10(b)(i) with respect to Investments (other than acquisitions) permitted by Section 6.03 or otherwise consented to by the Required Lenders (other than Investments in (A) Cash and Cash Equivalents and (B) any Subsidiary) (except to the extent financed with long-term Indebtedness (other than revolving Indebtedness)), *plus*

(vi) any required up-front payments in respect of Hedge Agreements, *plus*

(vii) [reserved], *plus*

(viii) without duplication of amounts deducted from Excess Cash Flow in respect of a prior period, at the option of the Borrowers, the aggregate consideration (including earn-outs) required to be paid in Cash by any Subsidiary pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period relating to capital expenditures or Investments (other than acquisitions) permitted by Section 6.03 or otherwise consented to by the Required Lenders (other than Investments in (x) Cash and Cash Equivalents and (y) Holdings or any of its Subsidiaries) to be consummated or made during the period of four consecutive Fiscal Quarters of Holdings following the end of such period (except, in each case, to the extent financed with long-term Indebtedness (other than revolving Indebtedness)); provided that to the extent the aggregate amount actually utilized to finance such capital expenditures or Investments during such subsequent period of four consecutive Fiscal Quarters is less than the

Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such subsequent period of four consecutive Fiscal Quarters, *plus*

(ix) the amount of Cash Taxes and Tax Distributions paid in such period (and Tax and Tax Distribution reserves set aside and payable within the four consecutive Fiscal Quarters following such period) to the extent such Taxes and Tax Distributions exceed the amount of Tax and Tax Distribution expense deducted in arriving at Consolidated Net Income for such period; provided that, to the extent the aggregate amount of Tax and Tax Distribution reserves set aside and actually paid during such subsequent four consecutive Fiscal Quarters is less than such amount of Tax and Tax Distribution reserves set aside, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such subsequent period of four consecutive Fiscal Quarters, *plus*

(x) to the extent not expensed during such period or not deducted in calculating Consolidated Net Income, the aggregate amount of expenditures, fees, costs and expenses paid in Cash during such period, other than to the extent financed with long-term Indebtedness (other than revolving Indebtedness).

"**Exchange Act**" means the Securities Exchange Act of 1934 and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Accounts**" means (i) foreign deposit accounts in countries other than Hungary and Cyprus, (ii) any disbursement accounts that are zero balance accounts, (iii) any payroll, withholding tax, fiduciary, trust or similar accounts or (iv) deposit or securities accounts with respect to which the aggregate balance as of the end of any Business Day is less than $1,000,000.

"**Excluded Subsidiary**" means (a) any subsidiary of any Closing Date Guarantor that is not a Wholly-Owned Subsidiary, (b) any Immaterial Subsidiary, (c) any Subsidiary that is prohibited by law, regulation or contractual obligations existing on the Closing Date or on the date such Person becomes a Subsidiary (and not entered into in contemplation of such Person becoming a Subsidiary or for the primary purpose of being classified as an Excluded Subsidiary hereunder) from providing a Loan Guaranty or that would require a governmental (including regulatory) consent, approval, license or authorization to provide such Loan Guaranty, (d) any not-for-profit Subsidiary, (e) any Captive Insurance Subsidiaries, (f) any special purpose entities used for permitted securitization facilities, (g) any Disregarded Domestic Subsidiary; (h) any direct or indirect Domestic Subsidiary of an After-Acquired CFC, (i) any After-Acquired CFC, (j) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower Representative, the burden or cost of providing a Loan Guaranty shall outweigh the benefits to be afforded thereby and (k) Osmotica Argentina; provided that none of (x) any person that is a Loan Party on the Closing Date, or (y) from and after the date on which RevitaLid becomes a Loan Party in accordance with Section 5.13(h), RevitaLid, shall be an Excluded Subsidiary.

"**Excluded Swap Obligation**" means, with respect to any Loan Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Loan Guaranty of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Loan Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by

virtue of such Loan Guarantor's failure to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Loan Guaranty of such Loan Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation; provided that with the written consent of the Administrative Agent and the Borrower Representative, a given Excluded Swap Obligation (determined as provided above without regard to this proviso) may be excluded from this definition. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Loan Guaranty or security interest is or becomes illegal.

"**Excluded Taxes**" means, with respect to the Administrative Agent, the Swingline Lender, any Lender or Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Borrower or any other Loan Party hereunder, (a) Taxes imposed on (or measured by) its income or franchise Taxes (i) by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Connection Income Taxes, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction described in clause (a), (c) in the case of a Foreign Lender, any withholding Tax that is imposed by the United States on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower Representative under Section 2.18), or designates a new lending office, except, in each case, to the extent that pursuant to Section 2.16 amounts with respect to withholding Taxes imposed by the United States 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, (d) any Tax imposed as a result of the Administrative Agent's, a Lender's, the Swingline Lender's or an Issuing Bank's failure to comply with Section 2.16(e) and (e) any U.S. federal withholding Taxes under FATCA.

"**Existing Debt Refinancing**" has the meaning assigned to such term in Section 4.01(h).

"**Extended Revolving Credit Commitment**" has the meaning assigned to such term in Section 2.22(a).

"**Extended Revolving Loans**" has the meaning assigned to such term in Section 2.22(a).

"**Extended Term Loans**" has the meaning assigned to such term in Section 2.22(a).

"**Extension**" has the meaning assigned to such term in Section 2.22(a).

"**Extension Offer**" has the meaning assigned to such term in Section 2.22(a).

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or, except with respect to Articles 5 and 6, heretofore owned, leased, operated or used by any Borrower or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Failed Auction**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**FATCA**" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements 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 entered into in connection with the implementation of such Sections of the Code.

"**Federal Funds Effective Rate**" means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

"**Fee Letter**" means that certain Fee Letter, dated as of December 3, 2015, by and among the Vertical/Trigen, CIT and Pacific Western Bank.

"**Financial Officer**" of any Person means the chief executive officer, the chief financial officer, the treasurer, any assistant treasurer, any vice president of finance or the controller of such Person or such Person's manager or managing member, as applicable, or any officer with substantially equivalent responsibilities.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of a Financial Officer of the Borrower Representative that such financial statements fairly present, in all material respects, in accordance with GAAP, the combined consolidated financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to the absence of footnotes and changes resulting from audit and normal year-end adjustments.

"**Financial Plan**" has the meaning assigned to such term in Section 5.01(h).

"**First Amendment**" means the First Amendment to Credit Agreement dated as of November 10, 2016, by and among the Borrowers, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"**First Amendment Effective Date**" means November 10, 2016.

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is perfected and senior in priority to any other Lien to which such Collateral is subject, other than any Permitted Liens (except for Permitted Liens securing any Indebtedness secured by a Lien which is, or is required to be, expressly subordinated to Liens securing the Obligations).

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Holdings ending on December 31 of each calendar year.

"**Flood Hazard Property**" means any owned Real Estate Asset located in the U.S. subject to a Mortgage and also located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**Foreign Lender**" means a Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Fourth Amendment**" means the Fourth Amendment to Credit Agreement dated as of December 12, 2020, by and among the Borrowers, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"**Fourth Amendment Effective Date**" means December 12, 2020.

"**Funding Account**" has the meaning assigned to such term in Section 2.03(vi).

"**GAAP**" means generally accepted accounting principles in the U.S. in effect and applicable to the accounting period in respect of which reference to GAAP is being made, subject to the provisions of Section 1.04.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court (including any supra-national body exercising such powers or functions, such as the European Union or European Central Bank), in each case whether associated with a state or locality of the United States, the United States, or a foreign government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Granting Lender**" has the meaning assigned to such term in Section 9.05(e).

"**Guarantee**" of or by any Person (the "**Guarantor**") means any obligation, contingent or otherwise, of the Guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the "**Primary Obligor**") in any manner, whether directly or indirectly, and including any obligation of the Guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation, (e) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (f) secured by any Lien on any assets of such Guarantor securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Guarantor (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition, Disposition or other transaction permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof,

in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

"**Guaranteed Obligations**" has the meaning assigned to such term in Section 10.01.

"**Guarantor Percentage**" has the meaning assigned to such term in Section 10.10.

"**Hazardous Materials**" means any chemical, material, infectious waste, medical waste, substance or waste, or any constituent thereof, exposure to which is prohibited, limited or regulated by any Environmental Law.

"**Hazardous Materials Activity**" means any activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of, or exposure to, any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

"**Healthcare Laws**" means, collectively, any and all local, state, federal, national, and supranational, and foreign healthcare laws, rules, regulations, orders and requirements relating to the regulation of the Borrowers and their Subsidiaries including, without limitation, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), the State Children's Health Insurance Program (Title XXI of the Social Security Act), CHAMPVA, the Veterans Health Care Regulations, DORS/90-594, TRICARE, any government payment program or any law governing the licensure of or regulating healthcare providers, suppliers, professionals, manufacturers, facilities or payors or otherwise governing or regulating the provision of, or payment for, medical services, or the manufacture, distribution or sale of pharmaceuticals, medical devices or medical supplies, the U.S. Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the Public Health Service Act (42 U.S.C. § 201 et seq.), the Controlled Substances Act (21 U.S.C. § 801 et seq.), the Food and Drugs Act, R.S. 1985, c. F-27 and Food and Drug Relations, C.R.C., ch. 870, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the false statements law (42 U.S.C. § 1320a-7b(a)), the exclusion laws (42 U.S.C. § 1320a-7), the Civil Monetary Penalties Law including the Anti-Inducement Law (42 U.S.C. § 1320a-7a), the federal Physician Payment Sunshine Law (42 U.S.C. § 1320a-7h), the Stark Law (42 U.S.C. § 1395nn), the Federal Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.), the Federal Health Care Fraud Law (18 U.S.C. § 1347), the criminal false claims statutes (18 U.S.C. §§ 286, 287 and 1001), the Medicare Secondary Payor Law (42 U.S.C. § 13957(b)), the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, HIPAA as amended by HITECH, PIPEDA and the Act respecting the protection of personal information (Quebec), R.S.Q., c. P-39.1, any comparable federal, provincial, territorial, state laws in Canada and the United States or any applicable foreign jurisdiction, and all regulations promulgated pursuant to such laws.

"**Hedge Agreement**" means any agreement with respect to any Derivative Transaction between any Loan Party or any Subsidiary and any other Person.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended from time to time, and any rules or regulations promulgated from time to time thereunder.

"**Historical Financial Statements**" means (a) the unaudited consolidated statements of financial position of Osmotica Cyprus and its subsidiaries and the related unaudited consolidated statements of comprehensive income and (b) the unaudited consolidated statements of financial position of Vertical/Trigen and its subsidiaries and the related unaudited consolidated statements of operations and comprehensive income (loss), in each case of clauses (a) and (b) above, for each the fiscal quarters ending March 31, 2015, June 30, 2015, and September 30, 2015.

"**HITECH**" means the Health Information Technology for Economic and Clinical Health Act of 2009 enacted as title XIII of division A and title IV of division B of the American Recovery and Reinvestment Act of 2009, P.L. 111-5.

"**Holding Company**" has the meaning assigned to such term in Section 6.15.

"**Holdings**" has the meaning assigned to such term in the preamble to this Agreement and shall include its permitted successors and assigns.

"**Hungarian Account Pledge**" the Agreement Establishing Pledge over Bank Accounts, dated on or about the date hereof, among Hungarian Holdings, as pledgor, and the Administrative Agent, as pledgee and security agent.

"**Hungarian Asset Pledge**" the agreement establishing pledge over specified group of assets, dated on or about the date hereof, among Hungarian Holdings, as pledgor, and the Administrative Agent, as pledgee and security agent.

"**Hungarian Authorization Letter**" means each letter executed by Hungarian Holdings with respect to any applicable account bank, which gives the Administrative Agent an authorization to request direct debiting from each bank account of Hungarian Holdings, other than any Excluded Account, substantially in the form attached hereto as Exhibit N.

"**Hungarian Holdings**" has the meaning assigned to such term in the Recitals to this Agreement.

"**Hungarian Master Reaffirmation (First Amendment)**" means the Amendment No. 1 Agreement, dated as of the First Amendment Effective Date, among Osmotica Cyprus, Hungarian Holdings and the Administrative Agent, reconfirming the continuation of the security interests created by each of (a) the Hungarian Quota Pledge, (b) the Hungarian Account Pledge, (c) the Hungarian Rights Pledge and (d) the Hungarian Asset Pledge.

"**Hungarian Master Reaffirmation (Third Amendment)**" means the Amendment No. 2 Agreement, dated as of the Third Amendment Effective Date, among Osmotica Cyprus, Hungarian Holdings and the Administrative Agent, reconfirming the continuation of the security interests created by each of (a) the Hungarian Quota Pledge, (b) the Hungarian Account Pledge, (c) the Hungarian Rights Pledge and (d) the Hungarian Asset Pledge.

"**Hungarian Master Reaffirmations**" means each of the Hungarian Master Reaffirmation (First Amendment) and the Hungarian Master Reaffirmation (Third Amendment).

"**Hungarian Quota Pledge"** means the agreement establishing pledge over quota, dated on or about the date hereof, among Osmotica Cyprus, as pledgor, the Administrative Agent, as pledgee and security agent and Hungarian Holdings.

"**Hungarian Rights Pledge**" the agreement establishing pledge over rights and receivables, dated on or about the date hereof, among Hungarian Holdings, as pledgor, and the Administrative Agent, as pledgee and security agent.

"**Hungarian Security Deposit Agreement**" means each agreement among Hungarian Holdings, the Administrative Agent, as security agent and any applicable account bank in relation to the blocking and establishment of security deposit to be created with respect to each bank account of Hungarian Holdings, other than any Excluded Account, pursuant to the Hungarian Account Pledge.

"**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002, as in effect from time to time (subject to the provisions of Section 1.04), to the extent applicable to the relevant financial statements.

"**Immaterial Subsidiary**" means, as of any date, any Subsidiary (a) having Consolidated Total Assets in an amount of less than 2.5% of Consolidated Total Assets of Holdings and (b) contributing less than 2.5% to consolidated revenue of Holdings, in each case, for the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01(a) or (b); provided that the Consolidated Total Assets (as so determined) and revenue (as so determined) of all Immaterial Subsidiaries shall not exceed 2.5% of Consolidated Total Assets of the Borrowers or 2.5% of the consolidated revenue of Holdings for the relevant Test Period, as the case may be.

"**Immediate Family Member**" means, with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual's estate (or an executor or administrator acting on its behalf), heirs or legatees or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Incremental Cap**" has the meaning assigned to such term in Section 2.21(a).

"**Incremental Commitment**" means any commitment made by a lender to provide all or any portion of an Incremental Facility or Incremental Loans.

"**Incremental Equivalent Debt**" has the meaning assigned to such term in Section 6.01(v).

"**Incremental Facilities**" has the meaning assigned to such term in Section 2.21(a).

"**Incremental Lender**" means any Lender or Additional Lender providing an Incremental Commitment or Incremental Loans.

"**Incremental Loans**" has the meaning assigned to such term in Section 2.21(a).

"**Incremental Revolving Commitment**" means any commitment made by a lender to provide all or any portion of any Incremental Revolving Commitment Increase.

"**Incremental Revolving Commitment Increase**" has the meaning assigned to such term in Section 2.21(a).

"**Incremental Revolving Loans**" has the meaning assigned to such term in Section 2.21(a).

"**Incremental Term Facility**" has the meaning assigned to such term in Section 2.21(a).

"**Incremental Term Loan Borrowing Date**" means, with respect to each Class of Incremental Term Loans, each date on which Incremental Term Loans of such Class are incurred pursuant to Section 2.01(e) and as otherwise specified in any amendment providing for Incremental Term Loans in accordance with Section 2.21.

"**Incremental Term Loans**" has the meaning assigned to such term in Section 2.21(a).

"**Indebtedness**", as applied to any Person, means, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (c) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP; (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding (w) any earn out obligation or purchase price adjustment until such obligation becomes a liability on the balance sheet in accordance with GAAP, (x) any such obligations incurred under ERISA, (y) accrued expenses and trade accounts payable in the ordinary course of business (including on an inter-company basis) and (z) liabilities associated with customer prepayments and deposits), which purchase price is (i) due more than six months from the date of incurrence of the obligation in respect thereof or (ii) evidenced by a note or similar written instrument; (e) all Indebtedness of others secured by any Lien on any property or asset owned or held by that Person regardless of whether the Indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person; (f) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (g) the Guarantee by such Person of the Indebtedness of another Person; (h) all obligations of such Person in respect of any Disqualified Capital Stock and (i) all net obligations of such Person in respect of any Derivative Transaction, including any Hedge Agreement, whether or not entered into for hedging or speculative purposes; provided that (i) in no event shall obligations under any Derivative Transaction be deemed "Indebtedness" for any calculation of the Total Leverage Ratio or any other financial ratio under this Agreement except to the extent of any accrued interest in respect of unpaid termination or settlement amounts thereunder and (ii) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited; provided that, notwithstanding anything herein to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, (x) the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness, and any such amounts that would have constituted Indebtedness hereunder but for the application of this proviso shall not be deemed an incurrence of Indebtedness hereunder and (y) the $10,500,000 contingent milestone

payment in connection with the purchase of Divigel, which would be payable to Upsher-Smith Laboratories, Inc. on March 23, 2017.

"**Indemnified Taxes**" means (a) Taxes other than Excluded Taxes and (b) Other Taxes.

"**Indemnitee**" has the meaning assigned to such term in Section 9.03(b).

"**Information**" has the meaning set forth in Section 3.11(a).

"**Information Memorandum**" means the Confidential Information Memorandum, dated January 6, 2016, relating to the Borrowers and the Transactions.

"**Interest Election Request**" means a request by the Borrower Representative in the form of Exhibit E hereto or such other form reasonably acceptable to the Administrative Agent to convert or continue a Borrowing in accordance with Section 2.07.

"**Interest Payment Date**" means (a) with respect to any ABR Loan, the last Business Day of each calendar month and the Revolving Credit Maturity Date or the maturity date applicable to such Loan or Additional Commitment and (b) with respect to any LIBO Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a LIBO Rate Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing.

"**Interest Period**" means with respect to any LIBO Rate Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, to the extent available to all relevant affected Lenders twelve months or a shorter period) thereafter, as the Borrower Representative may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"**Investment**" means (a) any purchase or other acquisition by Holdings or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than any Loan Party), (b) the acquisition by purchase or otherwise (other than purchases or other acquisitions of inventory, materials, supplies and/or equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any Person or any division or line of business or other business unit of any Person and (c) any loan, advance (other than advances to current or former employees, officers, directors, members of management, managers, consultants or independent contractors of any Borrower or its Subsidiaries or any Parent Company for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Holdings or any of its Subsidiaries to any other Person (other than any Loan Party). The amount of any Investment shall be the original cost of such Investment, *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, but (except in the case of Investments made in reliance on the "Available Amount")

giving effect to any repayments of principal in the case of Investments in the form of loans and any return of capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the initial Investment).

"**Investors**" has the meaning assigned to such term in the Recitals to this Agreement.

"**IP Rights**" has the meaning assigned to such term in Section 3.05(c).

"**IRS**" means the U.S. Internal Revenue Service.

"**Issuing Bank**" means, as the context may require, (a) Fifth Third Bank, (b) any other Revolving Lender that, at the request of the Borrower Representative and with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), agrees to become an Issuing Bank and (c) one or more banks, trust companies or other financial institutions in each case expressly identified by or acceptable to the Administrative Agent from time to time, in its reasonable discretion, and consented to by the Borrower Representative (such consent not to be unreasonably withheld or delayed), as an Issuing Bank for purposes of issuing one or more Letters of Credit pursuant to the terms of this Agreement. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"**Joinder Agreement**" has the meaning assigned to such term in Section 5.12(a).

"**Junior Indebtedness**" means any Subordinated Indebtedness (other than Indebtedness among Holdings and/or its subsidiaries) with an individual outstanding principal amount in excess of the Threshold Amount.

"**Junior Lien Indebtedness**" means any Indebtedness that is secured by a security interest on the Collateral (other than Indebtedness among Holdings and/or its subsidiaries) that is expressly junior or subordinated to the Lien securing the Credit Facilities.

"**Latest Maturity Date**" means, as of any date of determination, the latest maturity or expiration date applicable to any Loan or commitment hereunder at such time, including the latest maturity or expiration date of any Term Loan, Additional Term Loan, Revolving Loan, Additional Revolving Loan, Revolving Credit Commitment or Additional Commitment.

"**Latest Revolving Loan Maturity Date**" means, as of any date of determination, the latest maturity or expiration date applicable to any revolving loan or revolving credit commitment hereunder at such time, including the latest maturity or expiration date of any Revolving Loan, any Additional Revolving Loan, the Revolving Credit Commitment or any Additional Revolving Commitment.

"**Latest Term Loan Maturity Date**" means, as of any date of determination, the latest maturity or expiration date applicable to any term loan or term loan commitment hereunder at such time, including the latest maturity or expiration date of any Term Loan, Additional Term Loan or any Additional Term Commitment.

"**LC Collateral Account**" has the meaning assigned to such term in Section 2.05(j).

"**LC Disbursement**" means (without duplication) a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit issued by it.

"**LC Exposure**" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, *plus* (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall equal its Applicable Percentage of the aggregate LC Exposure at such time.

"**Legal Reservations**" means (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court, the general principles of equity and principles of good faith and fair dealing and (b) applicable bankruptcy, insolvency or similar laws, limitations with respect to enforcement under applicable Debtor Relief Laws and other similar laws affecting the rights of creditors and secured creditors generally.

"**Lenders**" means the Term Lenders, the Revolving Lenders, any Additional Lender and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"**Letter of Credit**" means any Standby Letter of Credit or Commercial Letter of Credit issued pursuant to this Agreement.

"**Letter of Credit Requests**" means a letter of credit request substantially in the form of Exhibit G.

"**LIBO Rate**" means, for any Interest Period with respect to any LIBO Rate Loan, the rate per annum equal to the rate determined by the Administrative Agent to be the London Interbank Offered Rate benchmark rate which is calculated and distributed daily by the Ice Benchmark Administration Data Service ("**ICE**") for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, distributed at approximately 11:45 a.m. (London time) (or such other time as confirmed by ICE) two (2) Business Days prior to the first day of such Interest Period; provided, however, that if no such rate is distributed by the ICE on such Business Day, such rate will be the rate of interest per annum, as determined by the Administrative Agent at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period by major financial institutions reasonably satisfactory to the Administrative Agent in the London interbank market for such Interest Period for the applicable principal amount on such date of determination; such rate, as adjusted to reflect applicable reserves prescribed by governmental authorities; provided that in no event shall the LIBO Rate be less than 1.00% per annum; provided, further, that when used in reference to any Loan or Borrowing, LIBO Rate refers to whether such loan, or the Loans comprising such Borrowing are bearing interest at a rate determined by reference to the LIBO Rate.

~~"**LIBOR Successor Rate Conforming Changes**" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Alternate Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the reasonable discretion of the Administrative Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines in consultation with the Borrower Representative).~~

"**Lien**" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any Capital Lease having substantially the same economic effect as any of the foregoing), in each case, in the nature of security; provided that in no event shall an operating lease in and of itself be deemed a Lien.

"**Limited Consent**" means that certain Limited Consent, dated as of May 21, 2020, by and among the Borrowers, other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"**Limited Long Term Incentive Plan**" means the limited long term incentive plan of Osmotica Cyprus.

"**Loan Documents**" means this Agreement, any Promissory Note, the Collateral Documents, the Subordination Agreement, the First Amendment, the Second Amendment ~~and~~, the Third Amendment, the Limited Consent and the Fourth Amendment. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto.

"**Loan Guarantor**" means each Loan Party with respect to the Secured Obligations of each other Loan Party.

"**Loan Guaranty**" means the guaranty set forth in Article 10 of this Agreement.

"**Loan Installment Date**" has the meaning assigned to such term in Section 2.09(a).

"**Loan Parties**" means Holdings, the Borrowers, each Closing Date Guarantor, each Subsidiary Guarantor and any other Person who becomes a party to this Agreement as a Loan Party pursuant to a Joinder Agreement, and their respective successors and assigns.

"**Loans**" means any Term Loan, any Revolving Loan, any Swingline Loan, or any Additional Term Loan or Additional Revolving Loan.

"**Management Agreement**" means that certain Advisory Services and Monitoring Agreement, dated as of the date hereof, by and among Vertical/Trigen, Hungarian Holdings, Avista Capital Holdings, LP and Altchem Limited.

"**Margin Stock**" has the meaning assigned to such term in Regulation U.

"**Material Adverse Effect**" means (a) on the Closing Date, a Closing Date Material Adverse Effect and (b) after the Closing Date, a material adverse effect on (i) the business, assets, financial condition or results of operations, in each case, of Holdings and its Subsidiaries, taken as a whole, (ii) the rights and remedies (taken as a whole) of the Administrative Agent under the applicable Loan Documents or (iii) the ability of the Borrowers and the other Loan Parties (taken as a whole) to perform their payment obligations under the applicable Loan Documents.

"**Material Contract**" means any contract or other arrangement (including any license or permit) to which any Loan Party or any of its Subsidiaries is a party (other than the Loan Documents), in each case for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"**Material Permitted Acquisition**" means any Permitted Acquisition where the aggregate amount of consideration for such Permitted Acquisition is more than $5,000,000.

"**Material Real Estate Asset**" means (a) any fee-owned Real Estate Asset owned by any Loan Party as of the Closing Date having a fair market value (as reasonably estimated by the Borrower Representative) in excess of $2,000,000 as of such date, (b) any fee-owned Real Estate Asset acquired by any Loan Party after the Closing Date having a fair market value (as reasonably estimated by the Borrower Representative) in excess of $2,000,000 as of the date of acquisition thereof and (c) the property owned by OPC located at 895 Sawyer Rd., Marietta, Georgia.

"**Maturity Date**" means (a) with respect to the Revolving Facility, the Revolving Credit Maturity Date, (b) with respect to the Term Loans, the Term Loan Maturity Date, (c) as to any Replacement Term Loans or Replacement Revolving Facility incurred pursuant to Section 9.02(c), the final maturity date for such Replacement Term Loan or Replacement Revolving Facility, as the case may be, as set forth in the applicable Refinancing Amendment, (d) with respect to any Incremental Term Loans, the final maturity date set forth in the applicable documentation with respect thereto, (e) with respect to any Incremental Revolving Commitment, the final maturity date set forth in the applicable documentation with respect thereto and (f) with respect to any Extended Revolving Credit Commitment or Extended Term Loans, the final maturity date set forth in the applicable Extension Offer accepted by the respective Lender or Lenders.

"**Maximum Liability**" has the meaning assigned to such term in Section 10.09.

"**Maximum Rate**" has the meaning assigned to such term in Section 9.19.

"**Minimum Extension Condition**" has the meaning assigned to such term in Section 2.22(b).

"**Moody's**" means Moody's Investors Service, Inc.

"**Mortgaged Properties**" means any parcel of real property and improvements thereto with respect to which a Mortgage is required to be granted pursuant to Section 5.12.

"**Mortgages**" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, on owned Real Estate Assets of a Loan Party.

"**Multiemployer Plan**" means any employee benefit plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA, that is subject to the provisions of Title IV of ERISA, and in respect of which any Borrower or any of its Subsidiaries, or any of their respective ERISA Affiliates, makes or is obligated to make contributions or with respect to which any of them has an ongoing obligation.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Borrowers and their Subsidiaries for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (a) any Cash payments or proceeds (including Cash Equivalents) received by any Subsidiary of Holdings (i) under any casualty insurance policy in respect of a covered loss thereunder of any assets of any Subsidiaries of Holdings or (ii) as a result of the taking of any assets of any Subsidiaries of Holdings by any Person pursuant to the

power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, *minus* (b) (i) any actual out-of-pocket costs incurred by any Subsidiaries of Holdings in connection with the adjustment, settlement or collection of any claims of any Subsidiaries of Holdings in respect thereof, (ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans and any other Indebtedness secured by a Lien that is *pari passu* or junior to the Lien on the Collateral securing the Secured Obligations) that is secured by a Lien on the assets in question and that is required to be repaid under the terms thereof as a result of such loss, taking or sale, (iii) in the case of a taking, the reasonable out-of-pocket costs of putting any affected property in a safe and secure position, (iv) any selling costs and out-of-pocket expenses (including reasonable broker's fees or commissions, legal fees, transfer and similar Taxes and the Borrower Representative's good faith estimate of income Taxes paid or payable (including Tax Distributions)) in connection with any sale or taking of such assets as referred to in clause (a)(ii) of this definition and (v) any amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustments associated with any sale or taking of such assets as referred to in clause (a)(ii) of this definition (provided that to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Insurance/Condemnation Proceeds).

"**Net Proceeds**" means (a) with respect to any Disposition (including any Prepayment Asset Sale), the Cash proceeds (including Cash Equivalents and Cash proceeds subsequently received (as and when received) in respect of non-Cash consideration initially received), net of (i) selling costs and out-of-pocket expenses (including reasonable broker's fees or commissions, legal fees, transfer and similar Taxes and the Borrower Representative's good faith estimate of income Taxes paid or payable (including Tax Distributions) in connection with such Disposition), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Disposition (provided that to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Proceeds), (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (other than the Loans and any other Indebtedness secured by a Lien that is *pari passu* or junior to the Lien on the Collateral securing the Secured Obligations) which is secured by the asset sold in such Disposition and which is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset) and (iv) Cash escrows (until released from escrow to any Subsidiaries of Holdings) from the sale price for such Disposition; and (b) with respect to any issuance or incurrence of Indebtedness or Capital Stock, the Cash proceeds thereof, net of all Taxes and customary fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith.

"**Non-Consenting Lender**" has the meaning assigned to such term in Section 2.18(b).

"**Non-Debt Fund Affiliate**" means any Investor and any Affiliate of any such Investor, other than any Debt Fund Affiliate or Holdings or any subsidiary of Holdings.

"**Non-Paying Guarantor**" has the meaning assigned to such term in Section 10.10.

"**Non-U.S. Collateral Document**" means each of (a) the Cyprus Share Pledge, (b) the Hungarian Quota Pledge, (c) the Hungarian Account Pledge, (d) the Hungarian Rights Pledge, (e) the Hungarian Asset Pledge, (f) the Hungarian Security Deposit Agreements, (g) the Hungarian Authorization Letters, (h) the Cyprus Debenture, (i) the Cyprus Charge over Bank Accounts, (j) the Cyprus Acknowledgments and (k) the Hungarian Master Reaffirmations.

"**Notice of Intent to Cure**" has the meaning assigned to such term in Section 6.16(b).

"**OBI**" has the meaning assigned to such term in the preamble to this Agreement.

"**OBI 2016 Incremental Portion**" means with respect to any Lender with a 2016 Incremental Term Commitment on the First Amendment Effective Date, the percentage of the aggregate 2016 Incremental Term Commitments represented by such Lender's 2016 Incremental Term Commitment multiplied by $17,290,266.

"**OBI Closing Portion**" means with respect to any Lender with a Closing Date Term Commitment on the Closing Date, the percentage of the aggregate Closing Date Term Commitments represented by such Lender's Closing Date Term Commitment multiplied by $23,544,192.

"**OBII**" has the meaning assigned to such term in the preamble to this Agreement.

"**OBII 2016 Incremental Portion**" means with respect to any Lender with a 2016 Incremental Term Commitment on the First Amendment Effective Date, the percentage of the aggregate 2016 Incremental Term Commitments represented by such Lender's 2016 Incremental Term Commitment multiplied by $4,988,298.

"**OBII Closing Portion**" means with respect to any Lender with a Closing Date Term Commitment on the Closing Date, the percentage of the aggregate Closing Date Term Commitments represented by such Lender's Closing Date Term Commitment multiplied by $6,792,576.

"**OBII Term A Portion**" means with respect to any Lender with a Term A Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term A Commitments represented by such Lender's Term A Commitment multiplied by $11,780,874.

"**OBII Term B Portion**" means with respect to any Lender with a Term B Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term B Commitments represented by such Lender's Term B Commitment multiplied by $2,122,680.

"**OBI Term A Portion**" means with respect to any Lender with a Term A Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term A Commitments represented by such Lender's Term A Commitment multiplied by $40,834,458.

"**OBI Term B Portion**" means with respect to any Lender with a Term B Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term B Commitments represented by such Lender's Term B Commitment multiplied by $7,357,560.

"**Obligated Party**" has the meaning assigned to such term in Section 10.02.

"**Obligations**" means all unpaid principal of and accrued and unpaid interest (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, the Swingline Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and all other advances to, debts, liabilities and obligations of the Loan Parties to the Lenders or to any Lender, the Administrative Agent, the Swingline Lender, any Issuing Bank or any indemnified party arising under the Loan Documents in respect of any Loan, any Swingline Loan or Letter of Credit, whether direct or

indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

"**OFAC**" has the meaning assigned to such term in Section 3.17.

"**OID**" has the meaning assigned to such term in the Recitals to this Agreement.

"**OPC**" has the meaning assigned to such term in the preamble to this Agreement.

"**OPC 2016 Incremental Portion**" means with respect to any Lender with a 2016 Incremental Term Commitment on the First Amendment Effective Date, the percentage of the aggregate 2016 Incremental Term Commitments represented by such Lender's 2016 Incremental Term Commitment multiplied by $70,617,500.

"**OPC Closing Portion**" means with respect to any Lender with a Closing Date Term Commitment on the Closing Date, the percentage of the aggregate Closing Date Term Commitments represented by such Lender's Closing Date Term Commitment multiplied by $96,160,000.

"**OPC Term A Portion**" means with respect to any Lender with a Term A Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term A Commitments represented by such Lender's Term A Commitment multiplied by $166,777,500.

"**OPC Term B Portion**" means with respect to any Lender with a Term B Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term B Commitments represented by such Lender's Term B Commitment multiplied by $30,050,000.

"**Organizational Documents**" means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement and (e) with respect to any other form of entity, such other equivalent organizational documents required by local law or customary under such jurisdiction to document the formation and governance principles of such type of entity. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"**Osmotica Argentina**" means Osmotica Argentina, S.A., a *sociedad anónima* formed under the laws of Argentina.

"**Osmotica BVI**" means Osmotica Corp., a business company incorporated in the British Virgin Islands.

"**Osmotica Cyprus**" has the meaning assigned to such term in the Recitals to this Agreement

"**Other Applicable Indebtedness**" has the meaning assigned to such term in Section 2.10(b)(ii).

"**Other Connection Taxes**" means, with respect to the Administrative Agent, any Lender, the Swingline Lender or any Issuing Bank or any other recipient, Taxes imposed as a result of a present or former connection between such Person and the jurisdiction imposing such Tax (other than connections

arising solely from such Person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under or engaged in any other transaction pursuant to or enforced by any Loan Document, or sold or assigned an interest in any Loan).

"**Other Taxes**" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes or any other excise or property Taxes, charges or similar levies arising solely from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document, but not including, (a) for the avoidance of doubt, the Excluded Taxes or (b) Other Connection Taxes imposed with respect to an assignment or sale of an interest in a Loan (other than pursuant to an assignment request by the Borrower Representative under Section 2.18).

"**Outstanding Amount**" means, on any date, after giving effect to any borrowings, prepayments, repayments or other Credit Extension occurring on such date, (a) with respect to Term Loans, Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof and (b) with respect to any LC Exposure on any date, the aggregate outstanding amount of such LC Exposure on such date.

"**Parent**" has the meaning assigned to such term in the Recitals to this Agreement.

"**Parent Administrative Expenses**" means all "Co-Invest Expenses" required to be paid by Parent under (and as defined in) Section 4.03(b) of the Amended and Restated Agreement of Limited Partnership of Parent, as in effect on the Closing Date.

"**Parent Company**" means (a) Holdings and (b) any other Person of which any Borrower is an indirect Wholly-Owned Subsidiary.

"**Participant**" has the meaning assigned to such term in Section 9.05(c).

"**Participant Register**" has the meaning assigned to such term in Section 9.05(c).

"**Paying Guarantor**" has the meaning assigned to such term in Section 10.10.

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Plan**" means any employee pension benefit plan, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), that is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any of its Subsidiaries, or any of their respective ERISA Affiliates, is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Perfection Certificate**" means a certificate substantially in the form of Exhibit L.

"**Perfection Certificate Supplement**" means a supplement to the Perfection Certificate substantially in the form of Exhibit M.

"**Perfection Requirements**" means the filing of appropriate financing statements with the office of the Secretary of State of the state of organization of each Loan Party (or other equivalent or similar filings in the applicable filing offices with respect to any Loan Party that is not a U.S. Loan Party), the filing of appropriate assignments or notices with the U.S. Patent and Trademark Office and the

U.S. Copyright Office (or other equivalent similar filing in the applicable filing offices with respect to any Loan Party that is not a U.S. Loan Party), the proper recordation of Mortgages and fixture filings with respect to any Material Real Estate Assets, the proper registration of the Hungarian Quota Pledge in the Hungarian company register, the proper registration of each of the Hungarian Asset Pledge, the Hungarian Account Pledge and the Hungarian Rights Pledge in the Hungarian security interest register, the proper registration of a Hungarian law pledge over IP ~~rights~~Rights into the relevant public registers, the execution and delivery of the Hungarian Security Deposit Agreements, in each case in favor of the Administrative Agent for the benefit of the Secured Parties, and the delivery to the Administrative Agent of any stock certificates or promissory notes required to be delivered pursuant to the applicable Loan Documents, the delivery of a Control Agreement with respect to each deposit account, securities account, commodities account, securities entitlement or commodity contract of any Loan Party, other than any Excluded Account, and the taking of any other action required pursuant to the Collateral Documents with respect to the perfection of the Administrative Agent's Liens with respect to the Collateral.

"**Permitted Acquisition**" means any acquisition by any Subsidiary of Holdings, whether by purchase, merger or otherwise, of all or substantially all of the assets of, or any product line (including research and development and related assets in respect of any product), business line, unit or division of, any Person or of a majority of the outstanding Capital Stock of any Person (but in any event including any Investment in a Subsidiary which serves to increase any Subsidiary of Holdings' respective equity ownership in such Subsidiary) or any Investment in any joint venture; provided that:

(a) after giving effect to such acquisition or such Investment, the Total Leverage Ratio would not exceed 3.50:1.00, calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01; provided that this clause (a) shall not apply to any acquisition or series of related acquisitions during any Fiscal Year where the aggregate amount of consideration for such acquisition or series of related acquisitions, together with the aggregate amount of consideration for all other Permitted Acquisitions in the same Fiscal Year (excluding any Permitted Acquisition previously subject to the Total Leverage Ratio test pursuant to this clause (a)), is less than $10,000,000;

(b) on the date of execution of the purchase agreement in respect of such acquisition or the date of such Investment, no Event of Default shall have occurred and be continuing or would result from the execution of such agreement;

(c) the total consideration paid by the Loan Parties for (i) the acquisition, directly or indirectly, of any Person that does not become a Loan Guarantor and (ii) in the case of an asset acquisition, assets that are not acquired by a Loan Party, when taken together with the total consideration for all such acquired Persons and assets acquired after the Closing Date, shall not exceed the sum of (A) $10,000,000 and (B) amounts otherwise available under clause (r) of Section 6.03; provided that the limitation under this clause (c) shall not apply to any acquisition to the extent such acquisition is made with the proceeds of sales of or equity contributions in respect of, Qualified Capital Stock of the Borrowers received after the Closing Date (other than any Cure Amount, any equity proceeds that are added in determining the Available Amount and any equity proceeds used to fund Restricted Payments pursuant to Section 6.04(b)(ii) or Section 6.04(h) or Restricted Debt Payments pursuant to clause (A) of Section 6.05(d));

(d) the applicable Borrower shall take or cause to be taken with respect to the acquisition of any new subsidiary of such Borrower, each of the actions required to be taken under Section 5.12, as applicable; and

(e) such acquisition or other Investment shall not be hostile and shall have been approved by the board of directors (or other similar body) and/or the equityholders of the Person proposed to be acquired or in which such Investment is to be made.

"**Permitted Holders**" means (a) the Investors and current and former management Persons of Holdings or any of its Subsidiaries and (b) any Person with which one or more Investors or any other Person described in clause (a) above form a "group" (within the meaning of Section 14(d) of the Exchange Act) so long as, in the case of this clause (b), the Investors beneficially own more than 50% of the relevant voting stock beneficially owned by such group.

"**Permitted Liens**" means Liens permitted pursuant to Section 6.02.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or any other entity.

"**Pledge and Security Agreement**" means that certain Pledge and Security Agreement, dated as of the date hereof, among the Loan Parties on the Closing Date and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and the other parties from time to time party thereto.

"**Prepayment Asset Sale**" means any Disposition by any Borrower or its Subsidiaries made pursuant to Section 6.06(h), Section 6.06(j), Section 6.06(p), clause (ii) to the proviso to Section 6.06(q) (to the extent provided therein) and Section 6.06(r).

"**Prime Rate**" means the rate of interest announced, from time to time, by JPMorgan Chase Bank, N.A. at its principal office in New York City as its "prime rate," (or if such rate is at any time not available, the prime rate so quoted by any banking institution selected by the Administrative Agent) with the understanding that the "prime rate" is not intended to be the lowest rate charged by any such banking institution to its borrowers.

"**Pro Forma Basis**" or "**pro forma effect**" means, with respect to any determination of the Consolidated Fixed Charge Coverage Ratio, the Total Leverage Ratio or Consolidated Total Assets (including component definitions thereof) that all Subject Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable Test Period (or, in the case of Consolidated Total Assets, as of the last day of such Test Period) with respect to any test or covenant for which such calculation is being made: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Subject Transaction, (i) in the case of a Disposition of all or substantially all Capital Stock of any Subsidiary of Holdings or any branch, division or product line of any Borrower or any Subsidiary of Holdings or any designation of a subsidiary as an Unrestricted Subsidiary, shall be excluded, and (ii) in the case of a Permitted Acquisition, Investment or designation of an Unrestricted Subsidiary as a Subsidiary described in the definition of the term "Subject Transaction", shall be included, (b) any incurrence, retirement or repayment by any Borrower or any of its Subsidiaries of Indebtedness; provided that pro forma effect shall be given to any such Indebtedness relating to transactions for which pro forma compliance has been tested but which transaction is pending (and not expired, terminated or cancelled) and has not then been consummated; provided, further, that, (x) if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of

interest for the applicable Test Period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness at the relevant date of determination (taking into account any interest hedging arrangements applicable to such Indebtedness), (y) interest on any obligations with respect to Capital Leases shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower Representative to be the rate of interest implicit in such obligation in accordance with GAAP and (z) interest on any Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a Eurocurrency interbank offered rate or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as such Borrower or Subsidiary may designate and (c) the acquisition of any Consolidated Total Assets, whether pursuant to any Subject Transaction or any Person becoming a subsidiary or merging, amalgamating or consolidating with or into any Borrower or any of its subsidiaries, or the Disposition of any Consolidated Total Assets described in the definition of Subject Transaction; provided that the foregoing pro forma adjustments described in clause (a) above may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of "Consolidated Adjusted EBITDA" and give effect to events (including operating expense reductions) that are (x) directly attributable to such transaction, (y) expected to have a continuing impact on the Borrowers and the Subsidiaries and (z) factually supportable.

"**Projections**" means that certain financial model furnished by the Sponsor to the Administrative Agent on November 17, 2017, and made available to the Lenders prior to the Third Amendment Effective Date.

"**Promissory Note**" means a promissory note of the Borrowers payable to any Lender or its registered assigns, in substantially the form of Exhibit F-1 (with respect to any Term Loans), Exhibit F-2 hereto (with respect to any Revolving Loans) or Exhibit F-3 hereto (with respect to any Swingline Loans) hereto, evidencing the aggregate outstanding principal amount of Loans of the Borrowers to such Lender resulting from the Loans made by such Lender.

"**Public Company Costs**" means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors' compensation, fees, indemnities and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors' and officers' insurance, listing fees and all executive, legal and professional fees related to the foregoing.

"**PWC Quality of Earnings Report**" means, collectively, the following reports prepared by PricewaterhouseCoopers LLP with respect to financial due diligence regarding members of the Combined Group: (i) Project Valkyrie III Draft Due Diligence Report – Vertical Pharmaceuticals, Inc., Trigen Laboratories, Inc., and Biovance Theraputics, LLC, dated as of September 11, 2015, (ii) Project Orbit Financial and HR Due Diligence – Osmotica Holdings Corp Limited and its subsidiaries, dated as of October 22, 2015, (iii) Project Valkyrie III Quality of Earnings Update – Vertical Pharmaceuticals, Inc., Trigen Laboratories, Inc., and Biovance Theraputics, LLC, dated as of November 15, 2015 and (iv) Project Orbit Draft Quality of Earnings Update – Osmotica Holdings Corp Limited and its subsidiaries, dated as of November 15, 2015.

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**QFC Credit Support**" has the meaning assigned to such term in Section 9.22.

"**Qualified Capital Stock**" of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualifying Bid**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Qualifying IPO**" means the issuance and sale by any Parent Company of its common Capital Stock in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) in real property then owned by any Loan Party.

"**Refinancing Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower Representative executed by each of (a) Holdings, the Borrowers and the Loan Guarantors, (b) the Administrative Agent and (c) each Lender that agrees to provide all or any portion of the Replacement Term Loans or the Replacement Revolving Facility, as applicable, being incurred pursuant thereto and in accordance with Section 9.02(c).

"**Refinancing Indebtedness**" has the meaning assigned to such term in Section 6.01(p).

"**Refunding Capital Stock**" has the meaning assigned to such term in Section 6.04(h).

"**Register**" has the meaning assigned to such term in Section 9.05(b).

"Registrar" means the Department of Registrar of Companies and Official Receiver of the Republic of Cyprus.

"**Regulation D**" means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Regulation T**" means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Regulation U**" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Regulation X**" means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Related Funds**" has the meaning assigned to such term in Section 9.05(b).

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, trustees, employees, agents and advisors of such Person and such Person's Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"**Replaced Revolving Facility**" has the meaning assigned to such term in Section 9.02(c).

"**Replaced Term Loans**" has the meaning assigned to such term in Section 9.02(c).

"**Replacement Revolving Facility**" has the meaning assigned to such term in Section 9.02(c).

"**Replacement Term Loans**" has the meaning assigned to such term in Section 9.02(c).

"**Reply Amount**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Reply Price**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**Representative**" has the meaning assigned to such term in Section 9.13.

"**Repricing Transaction**" means the prepayment, repayment, refinancing, repricing, substitution or replacement of all or any portion of the Term Loans the primary purpose of which is to reduce the all-in-yield applicable to the Term Loans (x) with the proceeds of any secured term loans incurred by any Loan Party or (y) in connection with any amendment, waiver or other modification to the Loan Documents for the Term Loans, in either case, (i) having or resulting in an effective interest rate (to be calculated in a manner consistent with that set forth in clause (v) of the proviso to Section 2.21(a)) as of the date of such prepayment, repayment, refinancing, repricing, substitution or replacement that is (and not by virtue of any fluctuation in any "base" rate) less than the effective interest rate (as determined by the Administrative Agent on the same basis) for the Term Loans as of the date of such prepayment, repayment, refinancing, repricing, substitution or replacement and (ii) in the case of a refinancing of the Term Loans, the proceeds of which are used to repay, in whole or in part, the principal of outstanding Term Loans; provided that in no event shall any such prepayment, repayment, refinancing, repricing, substitution or replacement in connection with a Change of Control, Material Permitted Acquisition or other similar Investment permitted hereunder constitute a Repricing Transaction. Any such determination by the Administrative Agent as contemplated by this definition shall be conclusive and binding on all Lenders, and the Administrative Agent shall have no liability to any Person with respect to such determination absent gross negligence or willful misconduct.

"**Required Bank Information**" means (a) (i) the unaudited consolidated statements of financial position of Osmotica Cyprus and its consolidated subsidiaries and the related unaudited consolidated statements of comprehensive income and (ii) the unaudited consolidated statements of financial position of Vertical/Trigen and its consolidated subsidiaries and the related unaudited consolidated statements of operations and comprehensive income (loss), in each case, for each Fiscal Quarter commencing with the Fiscal Quarter ending March 31, 2015 and ended at least 45 days prior to the Closing Date (or with respect to the Fiscal Quarter ending December 31, 2015, 60 days) and (b) a pro forma consolidated balance sheet of Holdings and its subsidiaries as of the last day of the most recently completed Fiscal

Quarter ended at least 45 days prior to the Closing Date (or, with respect to the Fiscal Quarter ending December 31, 2015, 60 days), prepared after giving effect to the Transactions as if the Transactions had occurred as of such date; provided that no such pro forma financial statement shall be required to include adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standards Codification 805, Business Combinations (formerly SFAS 141R)).

"**Required Lenders**" means, at any time, Lenders having Loans or unused Revolving Credit Commitments or Additional Commitments representing more than 50% of the sum of the total Loans and such unused commitments at such time; provided, that at any time at which two or more Lenders that are not Affiliates of each other hold Loans, unused Revolving Credit Commitments or Additional Commitments, Required Lenders shall consist of not less than two Lenders that are not Affiliates of each other.

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

"**Resolution Authority**" means ~~any body which has authority to exercise any Write Down and Conversion Powers~~an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Responsible Officer**" of any Person means the chief executive officer, the president, any executive vice president, any senior vice president, any vice president, the chief operating officer or any Financial Officer of such Person or such Person's manager or managing member, as applicable, and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement, and, as to any document delivered on the Closing Date (but subject to the express requirements set forth in Article 4), shall include 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 Amount**" has the meaning set forth in Section 2.10(b)(~~iv~~v).

"**Restricted Debt**" means (a) any Junior Lien Indebtedness, (b) any Junior Indebtedness, (c) any Subordinated Indebtedness, or (d) any Refinancing Indebtedness in respect of any of the foregoing.

"**Restricted Debt Payment**" has the meaning set forth in Section 6.05.

"**Restricted Payment**" means (a) any dividend or other distribution on account of any shares of any class of the Capital Stock of any Borrower now or hereafter outstanding, except a dividend payable solely in shares of Qualified Capital Stock of any Borrower to the holders of such class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of any Borrower now or hereafter outstanding and (c) any

payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of any Borrower now or hereafter outstanding.

"**Return Bid**" has the meaning assigned to such term in the definition of "Dutch Auction".

"**RevitaLid**" means RevitaLid Inc., a Delaware corporation.

"**RevitaLid Purchase Agreement**" means the Stock Purchase Agreement, dated as of October 24, 2017, by and between the shareholders of RevitaLid, Inc. and Osmotica Pharmaceutical Corp.

"**Revolving Credit Commitment**" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans (and acquire participations in Letters of Credit and Swingline Loans) hereunder as set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender assumed its Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.08, Section 2.10, Section 2.18 or Section 9.02(c), (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.05 or (c) increased pursuant to an Incremental Revolving Commitment Increase.

"**Revolving Credit Exposure**" means, with respect to any Revolving Lender at any time, the aggregate Outstanding Amount at such time of all Revolving Loans of such Revolving Lender, *plus* the aggregate amount at such time of such Revolving Lender's LC Exposure, *plus* the aggregate amount at such time of such Revolving Lender's participations in the Outstanding Amount of any Swingline Loans.

"**Revolving Credit Maturity Date**" means the date that is five years after the Third Amendment Effective Date.

"**Revolving Facility**" means, at any time, the aggregate amount of the Revolving Lenders' Revolving Credit Commitments at such time.

"**Revolving Lender**" means a Lender with a Revolving Credit Commitment or an Additional Revolving Commitment or an outstanding Revolving Loan or Additional Revolving Loan. Unless the context otherwise requires, the term "Revolving Lenders" shall include the Swingline Lender.

"**Revolving Loans**" means the revolving Loans made by the Lenders to the Borrowers pursuant to Section 2.01(a).

"**S&P**" means Standard & Poor's Financial Services LLC, a subsidiary of the McGraw-Hill Companies, Inc.

"**Sale and Lease-Back Transaction**" has the meaning assigned to such term in Section 6.09.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

"**Second Amendment**" means the Second Amendment to Credit Agreement dated as of April 28, 2017, by and among the Borrowers, the Borrower Representative, the Administrative Agent and the Lenders party thereto.

"**Secured Hedging Obligations**" means all Hedging Obligations under each Hedge Agreement that (a) is in effect on the Closing Date between any Borrower and a counterparty that is the

Administrative Agent, a Lender, an Arranger or an Affiliate of the Administrative Agent, a Lender or an Arranger as of the Closing Date or (b) is entered into after the Closing Date between any Borrower or any counterparty that is the Administrative Agent, a Lender, an Arranger or an Affiliate of the Administrative Agent, a Lender or an Arranger at the time such Hedge Agreement is entered into, for which any Borrower agrees to provide security, in each case that has been designated to the Administrative Agent in writing by the Borrower Representative as being a Secured Hedging Obligation for the purposes of the Loan Documents, it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article 8, Sections 9.03 and Section 9.10 as if it were a Lender; provided, further, that Secured Hedging Obligations shall not include Excluded Swap Obligations.

"**Secured Leverage Ratio**" means the ratio, as of any date of determination, of (a) Consolidated Secured Debt as of such date (net of the Unrestricted Cash Amount as of such date that is subject to a First Priority Lien in favor of the Administrative Agent) to (b) Consolidated Adjusted EBITDA for the Test Period then most recently ended for which financial statements have been delivered pursuant to Section 5.01, in each case for Holdings and its Subsidiaries on a consolidated basis.

"**Secured Obligations**" means all Obligations, together with (a) all Banking Services Obligations and (b) all Secured Hedging Obligations; provided that Secured Obligations shall not include Excluded Swap Obligations.

"**Secured Parties**" has the meaning assigned to such term in the Pledge and Security Agreement.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing; provided that "Securities" shall not include any earn-out agreement or obligation or any employee bonus or other incentive compensation plan or agreement.

"**Securities Act**" means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

"**Security Agreement Joinder Agreement**" has the meaning assigned to such term in the Pledge and Security Agreement.

"**SPC**" has the meaning assigned to such term in Section 9.05(e).

"**Specified Acquisition Agreement Representations**" means the representations made by or on behalf of or relating to the Target, its subsidiaries or their respective businesses in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that Vertical/Trigen (or any of its applicable Affiliates) has the right to terminate its (or their) obligations under the Acquisition Agreement or decline to consummate the Acquisition as a result of the breach of such representations in the Acquisition Agreement.

"**Specified Loan Party**" means (x) the U.S. Loan Parties other than Holdings and (y) Hungarian Holdings.

"**Specified Representations**" means the representations and warranties set forth in Sections 3.01(a) (as it relates to organizational existence of the Loan Parties), 3.02 (as it relates to the due authorization, execution, delivery and performance of the Loan Documents and the enforceability thereof), 3.03(b)(i), 3.08, 3.12, 3.14 (as it relates to the creation, validity and perfection of the security interests in the Collateral), 3.16, 3.17, 3.21 and 3.22.

"**Sponsor**" means ACP III AIV, L.P. and ACP Holdco (Offshore), L.P., together with their Affiliates and funds managed or advised by Avista Capital Holdings, L.P. or its Controlled Affiliates.

"**Sponsor Model**" means that certain financial model furnished by the Sponsor to the Administrative Agent on December 14, 2015 and made available to the Lenders prior to the Closing Date.

"**Standby Letter of Credit**" means any Letter of Credit other than a Commercial Letter of Credit.

"**Stated Amount**" means, with respect to each Letter of Credit, at any time, the maximum amount available to be drawn thereunder, in each case determined (x) as if any future automatic increases in the maximum available amount provided for in any such Letter of Credit had in fact occurred at such time and (y) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder.

"**Subject Transaction**" means, with respect to any Test Period, (a) the Transactions, (b) any Permitted Acquisition or other acquisition of all or substantially all of the assets of, any practice, product line (including research and development and related assets in respect of any product), business line, unit or division of, any Person or of a majority of the outstanding Capital Stock of any Person (including any Investment in a Subsidiary which serves to increase any Borrower's or any Subsidiary's respective equity ownership in such Subsidiary or any acquisition or Investment in any joint venture for the purpose of purchasing any or all of the interests of any joint venture), in each case permitted under Section 6.03(q), and (r) or which is otherwise permitted by this Agreement, (c) any Disposition of all or substantially all of the assets or stock of a Subsidiary (or any practice, business, product line (including research and development and related assets in respect of any product), line of business, unit or division of any member of the Combined Group) permitted by this Agreement, (d) the designation of a subsidiary as an Unrestricted Subsidiary or an Unrestricted Subsidiary as a Subsidiary in accordance with Section 5.10 hereof or (e) any other event that by the terms of the Loan Documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis.

"**Subordinated Indebtedness**" means any Indebtedness of any Borrower or any of its Subsidiaries that is expressly subordinated in right of payment to the Obligations.

"**Subordinated Note Documents**" means the Subordinated Notes, the Subordinated Note Purchase Agreement, the "Fee Letter" under and as defined in the Subordinated Note Purchase Agreement and any other Note Document (as defined in the Subordinated Note Purchase Agreement).

"**Subordinated Noteholder**" means any holder of obligations under the Subordinated Note Documents.

"**Subordinated Note Purchase Agreement**" means the Note Purchase Agreement, dated as of the Closing Date, by and among each of the Loan Parties, Newstone Capital Partners II, L.P., as initial purchaser, and Newstone Capital Partners, LLC, as purchase representative.

"**Subordinated Notes**" means the Senior Subordinated Notes in the aggregate principal amount of $40,000,000 and issued on the Closing Date by the Borrowers to Newstone Capital Partners II, L.P. in accordance with the Subordinated Note Documents, as in effect on the Closing Date and as may be amended or refinanced, in each case to the extent permitted by this Agreement and the Subordination Agreement. The Subordinated Notes were repaid in full on the Third Amendment Effective Date.

"**Subordination Agreement**" means the Subordination Agreement substantially in the form of Exhibit K hereto, dated as of the Closing Date, among the Subordinated Noteholders, the Administrative Agent, as agent for the Lenders and the Loan Parties.

"**subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other subsidiaries of that Person of a combination thereof; provided that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interests in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Subsidiary**" means any subsidiary of Holdings other than an Unrestricted Subsidiary.

"**Subsidiary Guarantor**" means (x) on the Closing Date, each Subsidiary of Holdings (other than any Borrower or Excluded Subsidiary) and (y) thereafter, each Subsidiary of Holdings (other than any Borrower or Excluded Subsidiary) that thereafter guarantees the Secured Obligations pursuant to the terms of this Agreement, in each case, until such time as the respective Subsidiary is released from its obligations under the Loan Guaranty in accordance with the terms and provisions hereof.

"**Supported QFC**" has the meaning assigned to such term in Section 9.22.

"**Swingline Lender**" means CIT, in its capacity as lender of Swingline Loans hereunder or any successor lender of Swingline Loans hereunder.

"**Swingline Loan**" means a Loan made pursuant to Section 2.04.

"**Swap Obligation**" means, with respect to any Loan Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"**Syndication Agent**" means The Governor and Company of the Bank of Ireland.

"**Target**" has the meaning assigned to such term in the Recitals to this Agreement.

"**Tax Distribution**" has the meaning assigned to such term in Section 6.04(a)(ii).

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

"**Term A Loan**" means a term loan made by the Lenders to the Borrowers pursuant to Section 2.01(c) and any term loan made by any Lender to any Borrower pursuant to Section 2.01(e) as a Term A Loan hereunder.

"**Term A Commitment**" means, with respect to each Lender, the commitment of such Lender to make a Term A Loan in an aggregate amount not to exceed the amount set forth opposite such Lender's name under the heading "Term A Commitment" on the Commitment Schedule. The aggregate amount of the Lenders' Term A Commitments on the Third Amendment Effective Date (immediately prior to the incurrence of the Term A Loans on such date) is $277,500,000.

"**Term B Loan**" means a term loan made by the Lenders to the Borrowers pursuant to Section 2.01(d) and any term loan made by any Lender to the Borrower pursuant to Section 2.01(e) as a Term B Loan hereunder.

"**Term B Commitment**" means, with respect to each Lender, the commitment of such Lender to make a Term B Loan in an aggregate amount not to exceed the amount set forth opposite such Lender's name under the heading "Term B Commitment" on the Commitment Schedule. The aggregate amount of the Lenders' Term B Commitments on the Third Amendment Effective Date (immediately prior to the incurrence of the Term B Loans on such date) is $50,000,000.

"**Term Commitment**" means, with respect to each Lender, the sum of its Term A Commitment and its Term B Commitment.

"**Term Facility**" means the Term Loans provided to or for the benefit of the Borrowers pursuant to the terms of this Agreement.

"**Termination Date**" has the meaning assigned to such term in Article 5.

"**Term Lender**" means a Lender with a Term Commitment or an Additional Term Commitment or an outstanding Term Loan or Additional Term Loan.

"**Term Loan**" means a Term A Loan, a Term B Loan and any other term loan made by the Lenders to the Borrowers pursuant to Section 2.01, including, if applicable, any Additional Term Loans.

"**Term Loan Maturity Date**" means the date which is five years after the Third Amendment Effective Date.

"**Test Period**" means a period of four consecutive Fiscal Quarters.

"**Third Amendment**" means the Third Amendment to Credit Agreement dated as of December 21, 2017, by and among the Borrowers, the other Loan Parties party thereto, the Administrative Agent, the Lenders and each "Departing Lender" (under and as defined therein).

"**Third Amendment Debt Repayment**" means the indefeasible payment, redemption, defeasance, discharge and termination (including the release and termination of any security interests and guaranties related thereto) of (i) the entire outstanding principal amount of the Subordinated Notes and all interest, fees (including any prepayment fees), expenses and other obligations under any Subordinated Note Purchase Agreement and (ii) the entire principal amount of the Designated PIK Notes and all interest, fees (including any prepayment fees), expenses and other obligations with respect thereto, in the

case of this clause (ii), by effecting certain cash transfers among the Loan Parties and the making by Hungarian Holdings of the Designated PIK Intercompany Loan to Parent.

"**Third Amendment Effective Date**" means December 21, 2017.

"**Threshold Amount**" means $5,000,000.

"**Total Leverage Ratio**" means the ratio, as of any date of determination, of (a) Consolidated Total Debt as of such date (net of the Unrestricted Cash Amount as of such date that is subject to a First Priority Lien in favor of the Administrative Agent) to (b) Consolidated Adjusted EBITDA for the Test Period then most recently ended for which financial statements have been delivered pursuant to Section 5.01, in each case for Holdings and its Subsidiaries on a consolidated basis.

"**Total Revolving Credit Commitment**" means, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time. The Total Revolving Credit Commitment as of the Closing Date was $30,000,000. The Total Revolving Credit Commitment as of the Third Amendment Effective Date, after giving effect to the Third Amendment, is $50,000,000.

"**Transaction Costs**" means the fees, premiums, expenses and other transaction costs (including OID or upfront fees and the discharge of obligations owed to participants in Osmotica Cyprus' Limited Long Term Incentive Plan) incurred by Parent and its subsidiaries in connection with the Transactions.

"**Transaction Costs (Third Amendment)**" means the fees, premiums, expenses and other transaction costs (including OID or upfront fees) incurred by Parent and its subsidiaries in connection with the Transactions (Third Amendment).

"**Transactions**" means, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the Borrowing of Loans hereunder on the Closing Date and the use of the proceeds thereof, (b) the Acquisition and the other transactions contemplated by the Acquisition Agreement, (c) the Equity Contribution, (d) the incurrence of Indebtedness under the Subordinated Note Purchase Agreement on the Closing Date and the use of the proceeds thereof, (e) the Existing Debt Refinancing and (f) the payment of the Transaction Costs.

"**Transactions (Third Amendment)**" means, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents dated as of the Third Amendment Effective Date to which they are a party and the Borrowing of Term Loans on the Third Amendment Effective Date and the use of the proceeds thereof, (b) the payoff of the Indebtedness under the Subordinated Note Purchase Agreement and the Designated PIK Notes on the Third Amendment Effective Date and the use of the proceeds thereof (including the intercompany contribution, payment and financing transactions contemplated hereby), and (c) the payment of the Transaction Costs (Third Amendment).

"**Treasury Capital Stock**" has the meaning assigned to such term in Section 6.04(h).

"**Type**", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the LIBO Rate or the Alternate Base Rate.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue or perfection of security interests.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form 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.

"**United States**" or "**U.S.**" means the United States of America.

"**Unrestricted Cash Amount**" means, as of any date of determination, unrestricted Cash and Cash Equivalents of the U.S. Loan Parties held in a bank account maintained in the U.S. that is subject to a Control Agreement.

"**Unrestricted Subsidiary**" means any subsidiary of Holdings designated by Holdings as an Unrestricted Subsidiary pursuant to Section 5.10 subsequent to the Closing Date, other than any such subsidiary that is a Borrower or a Closing Date Guarantor.

"**Unused Revolving Credit Commitment**" of any Lender, at any time, means the remainder of the Revolving Credit Commitment of such Lender at such time, if any, less the sum of (a) the aggregate Outstanding Amount of Revolving Loans made by such Lender, (b) such Lender's LC Exposure at such time and (c) except for purposes of Section 2.11(a), such Lender's Applicable Percentage of the aggregate Outstanding Amount of Swingline Loans.

"**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. No. 107-56 (signed into law October 26, 2001)).

"**U.S. Loan Party**" means a Loan Party that is a Domestic Subsidiary or Holdings.

"**U.S. Special Resolution Regimes**" has the meaning assigned to such term in Section 9.22.

"**Valkyrie**" has the meaning assigned to such term in the preamble to this Agreement.

"**Valkyrie 2016 Incremental Portion**" means with respect to any Lender with a 2016 Incremental Term Commitment on the First Amendment Effective Date, the percentage of the aggregate 2016 Incremental Term Commitments represented by such Lender's 2016 Incremental Term Commitment multiplied by $24,603,936.

"**Valkyrie Closing Portion**" means with respect to any Lender with a Closing Date Term Commitment on the Closing Date, the percentage of the aggregate Closing Date Term Commitments represented by such Lender's Closing Date Term Commitment multiplied by $33,503,232.

"**Valkyrie Term A Portion**" means with respect to any Lender with a Term A Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term A Commitments represented by such Lender's Term A Commitment multiplied by $58,107,168.

"**Valkyrie Term B Portion**" means with respect to any Lender with a Term B Commitment on the Third Amendment Effective Date, the percentage of the aggregate Term B Commitments represented by such Lender's Term B Commitment multiplied by $10,469,760.

"**Vertical Owners**" has the meaning assigned to such term in the Recitals to this Agreement.

"**Vertical/Trigen**" has the meaning assigned to such term in the Recitals to this Agreement.

"**Vertical/Trigen Business**" has the meaning assigned to such term in the Recitals to this Agreement

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"**Wholly-Owned Subsidiary**" of any Person means a subsidiary of such Person, 100% of the Capital Stock of which (other than directors' qualifying shares or shares required by law to be owned by a resident of the relevant jurisdiction) shall be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

"**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. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "Term Loan") or by Type (*e.g.*, a "LIBO Rate Loan") or by Class and Type (*e.g.*, a "LIBO Rate Term Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "Term Borrowing") or by Type (*e.g.*, a "LIBO Rate Borrowing") or by Class and Type (*e.g.*, a "LIBO Rate Term Borrowing").

Section 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein or in any Loan Document (including any Loan Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified or extended, replaced or refinanced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications or

extensions, replacements or refinancings set forth herein), (b) any reference to any law in any Loan Document, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law, (c) any reference herein or in any Loan Document to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein," "hereof" and "hereunder," and words of similar import, when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision hereof, (e) all references herein or in any Loan Document to Articles, Sections, clauses, paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections, clauses and paragraphs of, and Exhibits and Schedules to, such Loan Document, (f) in the computation of periods of time in any Loan Document from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" mean "to but excluding" and the word "through" means "to and including" and (g) the words "asset" and "property", when used in any Loan Document, shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including Cash, securities, accounts and contract rights. For purposes of determining compliance at any time with Sections 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.07, 6.08 and 6.10, in the event that any Indebtedness, Lien, Investment, Restricted Payment, Restricted Debt Payment, Disposition, contractual restriction or affiliate transaction, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Sections 6.01 (other than Sections 6.01(a), (v) and (w)), 6.02 (other than Sections 6.02(a) and (t)), 6.03, 6.04, 6.05, 6.06, 6.07, 6.08 and 6.10, as applicable, the Borrower Representative, in its sole discretion, may, from time to time, classify or reclassify such transaction or item (or portion thereof) and will not be required to include the amount and type of such transaction (or portion thereof) in more than one clause of such Section at any one time.

Section 1.04. Accounting Terms; GAAP.

(a) Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time, and all terms of an accounting or financial nature that are used in calculating the Total Leverage Ratio or Consolidated Total Assets shall be construed and interpreted in accordance with, GAAP, as in effect from time to time; provided that if the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including the conversion to IFRS as described below) on the operation of such provision (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith; provided, further, that if an amendment is requested by the Borrower Representative or the Required Lenders, then the Borrower Representative and the Administrative Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to the Lenders) to preserve the original intent thereof in light of such changes in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed); provided, further, that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrowers or any of their subsidiaries at "fair value," as defined therein and (ii) any treatment of Indebtedness in

respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. If the Borrower Representative notifies the Administrative Agent that the Borrowers are required to report under IFRS or have elected to do so through an early adoption policy, upon the execution of an amendment hereto in accordance herewith to accommodate such change "GAAP" shall mean international financial reporting standards pursuant to IFRS (provided that after such conversion, the Borrowers cannot elect to report under GAAP).

(b) Notwithstanding anything to the contrary herein, financial ratios and tests (including the Total Leverage Ratio and the amount of Consolidated Total Assets) contained in this Agreement that are calculated with respect to any Test Period during which any Subject Transaction occurs shall be calculated with respect to such Test Period and such Subject Transaction on a Pro Forma Basis. Further, if since the beginning of any such Test Period and on or prior to the date of any required calculation of a financial ratio or test (x) a Subject Transaction shall have occurred or (y) any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into any Borrower or any of its Subsidiaries since the beginning of such Test Period shall have made any Subject Transaction, then, in each case, any applicable financial ratio or test shall be calculated on a Pro Forma Basis for such Test Period as if such Subject Transaction occurred at the beginning of the applicable Test Period (it being understood, for the avoidance of doubt, that solely for purposes of calculating quarterly compliance with Section 6.16, the date of the required calculation shall be the last day of the Test Period and Subject Transactions occurring thereafter shall not be taken into account).

(c) Notwithstanding anything to the contrary contained in paragraph (a) above or the definition of "Capital Lease," in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that they were in existence on the date hereof) that would constitute Capital Leases on the date hereof shall be considered Capital Leases and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that, along with all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such accounting change, the Borrower Representative shall deliver a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

(d) For purposes of determining the permissibility of any action, change, transaction or event that by the terms of the Loan Documents requires a calculation of Consolidated Total Assets, Consolidated Total Assets shall be calculated at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in Consolidated Total Assets occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

(e) Notwithstanding anything to the contrary contained in paragraph (a) above, in the event of an accounting change related to the consolidation of variable interest entities or other entities that are not majority-owned, Consolidated Net Income and all terms of an accounting or financial nature that are used in calculating the financial ratios and tests (including the Total Leverage Ratio or Consolidated Total Assets) under this Agreement or any other Loan Document, shall be made in accordance with the variable interest entity and other consolidation accounting standards as applied at the Closing Date. For the avoidance of doubt, Consolidated Net Income and all terms of accounting or financial nature that are

used in calculating the financial ratios and tests (including the Total Leverage Ratio or Consolidated Total Assets) include the entire Combined Group and only the Combined Group, irrespective of any reference to "Holdings", "Borrowers," "Holdings and its Subsidiaries", "the Borrowers and their subsidiaries," "such Person," "such Person and its subsidiaries" or "such Person and its Subsidiaries" or any like description.

Section 1.05. Effectuation of Transactions. Each of the representations and warranties of the Loan Parties contained in this Agreement and the other Loan Documents (and all corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.06. Timing of Payment of Performance. When 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 (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

Section 1.07. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

~~Section 1.08. LIBOR Replacement. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower Representative or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower Representative) that the Borrower Representative or Required Lenders (as applicable) have determined, that:~~

~~(a) adequate and reasonable means do not exist for ascertaining the London Interbank Offered Rate for any requested Interest Period, because the London Interbank Offered Rate benchmark rate distributed by ICE is not available or published on a current basis and such circumstances are unlikely to be temporary; or~~

~~(b) ICE or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the London Interbank Offered Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "**Scheduled Unavailability Date**"), or~~

~~(c) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the London Interbank Offered Rate,~~

Section 1.08. LIBOR Replacement.

(a) If, at any time:

(x) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (1) any of the circumstances described in clause (a), (b), (c) or (d) of Section 2.13 have arisen and such circumstances are unlikely to be temporary or (2) Dollar denominated syndicated credit facilities are being executed or amended to incorporate or adopt a new alternative interest rate to replace the LIBO Rate;

(y) a public statement or publication of information has been made (A) by or on behalf of the administrator of the LIBO Rate, the regulatory supervisor for the administrator of the LIBO Rate, the Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBO Rate, a resolution authority with jurisdiction over the administrator for the LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Rate, in each case which states that the administrator of the LIBO Rate has ceased or will cease to provide the LIBO Rate permanently or indefinitely; provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the LIBO Rate, or (B) by the regulatory supervisor for the administrator of the LIBO Rate or any Governmental Authority having jurisdiction over the Administrative Agent announcing that the LIBO Rate is no longer representative or may no longer be used; or

(z) the Required Lenders notify the Administrative Agent, with a copy to the Borrower Representative, that:

(i) the circumstance described in clause (b) of Section 2.13 has arisen and such circumstance is unlikely to be temporary; or

(ii) the Required Lenders have determined that Dollar-denominated syndicated credit facilities are being executed or amended to incorporate or adopt a new alternative interest rate to replace the LIBO Rate;

then the Administrative Agent and the Borrower Representative shall endeavor to agree upon an alternate rate of interest to the LIBO Rate and agree on the replacement spreads and floors applicable thereto, giving due consideration to any evolving or then-prevailing market convention for determining a replacement rate of interest or spread for similar Dollar denominated syndicated credit facilities (which replacement spread may be a positive or negative value or zero) or any selection or recommendation of a replacement rate and/or spread or the mechanism for determining such a rate or spread by the relevant Governmental Authority in effect at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest, replacement spreads and floors applicable thereto and such other changes to this Agreement as may be appropriate; provided that such amendment shall provide that in no event shall such alternate rate of interest be less than 1.00% per annum. Such alternate rate of interest may include the forward-looking term rate based on the secured overnight financing rate published by the Federal Reserve Bank of New York (or a successor administrator).

~~then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower Representative may amend this Agreement to (i) amend the definition of LIBO Rate to refer to an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "**LIBOR Successor Rate**"), and (ii) make any proposed LIBOR Successor Rate Conforming Changes, and any~~(b) Notwithstanding anything to the contrary in this Section 1.08, such amendment shall become effective ~~at 5:00 p.m. (New York time) on~~without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, on or before the fifth Business Day after the date the Administrative Agent shall have ~~posted~~notified all Lenders of such proposed amendment ~~to all Lenders and the Borrower Representative unless, prior to such time, Lenders~~

~~comprising the~~, written notice from Required Lenders ~~have delivered to the Administrative Agent written notice~~ that such ~~Required~~ Lenders ~~do not accept~~object to such amendment.

If no ~~LIBOR Successor Rate has been determined and~~alternate rate of interest shall be agreed upon and implemented pursuant to an amendment to this Agreement in accordance with this Section 1.08, and one or more of the circumstances ~~under~~or events described in clause (~~i~~a) ~~above exist or the Scheduled Unavailability Date has~~of this Section 1.08 have arisen or occurred ~~(as applicable)~~, the Administrative Agent will promptly so notify the Borrower Representative and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended~~,~~ (to the extent of the affected LIBO Rate Loans or Interest Periods), and (y) the LIBO Rate component shall no longer be utilized in determining the Alternate Base Rate. Upon receipt of such notice, any Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans (to the extent of the affected LIBO Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (subject to the foregoing clause (y)) in the amount specified therein. ~~Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than 1.00% per annum for purposes of this Agreement.~~

(c) In connection with the implementation of an alternate rate of interest to the LIBO Rate and/or replacement spreads applicable thereto, the Administrative Agent will have the right to make any technical, administrative or operational changes (including changes to the definition of Alternate Base Rate, the definition of Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent, in consultation with the Borrower, decides may be appropriate to reflect the adoption and implementation of such alternate rate of interest and/or replacement spreads and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such alternate rate of interest and/or replacement spreads exists, in such other manner of administration as the Administrative Agent, in consultation with the Borrower, decides is reasonably necessary in connection with the administration of this Agreement) from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such changes will become effective without any further action or consent of any other party to this Agreement.

Section 1.09. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Capital Stock at such time.

ARTICLE 2 THE CREDITS

Section 2.01. Commitments.

(a) Subject to the terms and conditions set forth herein, each Term Lender with a Closing Date Term Commitment made Closing Date Term Loans on the Closing Date in Dollars to (i) OPC in a principal amount equal to the OPC Closing Portion of such Term Lender's Closing Date Term Commitment, (ii) OBI in a principal amount equal to the OBI Closing Portion of such Term Lender's Closing Date Term Commitment, (iii) OBII in an principal amount equal to the OBII Closing Portion of such Term Lender's Closing Date Term Commitment and (iv) Valkyrie in a principal amount equal to the Valkyrie Closing Portion of such Term Lender's Closing Date Term Commitment. Subject to the terms and conditions set forth herein, each Revolving Lender agrees, severally and not jointly, to make Revolving Loans to the Borrowers in Dollars, at any time and from time to time on and after the Closing Date, and until the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitment of such Lender in accordance with the terms hereof; provided that, after giving effect to any Borrowing of Revolving Loans the Outstanding Amount of such Lender's Revolving Credit Exposure shall not exceed such Lender's Revolving Credit Commitment. Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, the Borrowers may borrow, repay or prepay and reborrow Revolving Loans.

(b) On the First Amendment Effective Date, the 2016 Incremental Term Loan was funded in accordance with the terms of the First Amendment.

(c) Subject to the terms and conditions set forth herein, each Term Lender with a Term A Commitment agrees, severally and not jointly, to make a Term A Loan on the Third Amendment Effective Date in Dollars to (i) OPC in a principal amount not to exceed the OPC Term A Portion of such Term Lender's Term A Commitment, (ii) OBI in a principal amount not to exceed the OBI Term A Portion of such Term Lender's Term A Commitment, (iii) OBII in an principal amount not to exceed the OBII Term A Portion of such Term Lender's Term A Commitment and (iv) Valkyrie in a principal amount not to exceed the Valkyrie Term A Portion of such Term Lender's Term A Commitment. The Term A Loan shall be funded in accordance with the Third Amendment, including by the exchange of certain Term Loans existing on the Third Amendment Effective Date under this Agreement as in effect prior to giving effect to the Third Amendment, for Term A Loans, in accordance with the terms of the Third Amendment. Immediately upon the funding of the Term A Loan on the Third Amendment Effective Date in accordance with the Third Amendment, the Term A Commitments shall automatically terminate. Amounts paid or repaid in respect of the Term A Loans may not be reborrowed.

(d) Subject to the terms and conditions set forth herein, each Term Lender with a Term B Commitment agrees, severally and not jointly, to make a Term B Loan on the Third Amendment Effective Date in Dollars to (i) OPC in a principal amount not to exceed the OPC Term B Portion of such Term Lender's Term B Commitment, (ii) OBI in a principal amount not to exceed the OBI Term B Portion of such Term Lender's Term B Commitment, (iii) OBII in an principal amount not to exceed the OBII Term B Portion of such Term Lender's Term B Commitment and (iv) Valkyrie in a principal amount not to exceed the Valkyrie Term B Portion of such Term Lender's Term B Commitment. The Term B Loan shall be funded in accordance with the Third Amendment, including by the exchange of certain Term Loans existing on the Third Amendment Effective Date under this Agreement as in effect prior to giving effect to the Third Amendment, for Term B Loans, in accordance with the terms of the Third Amendment. Immediately upon the funding of the Term B Loan on the Third Amendment

Effective Date in accordance with the Third Amendment, the Term B Commitments shall automatically terminate. Amounts paid or repaid in respect of the Term B Loans may not be reborrowed.

(e) Subject to the terms and conditions of this Agreement, after the Third Amendment Effective Date, each Additional Lender with an Additional Term Commitment for a given Class of Incremental Term Loans severally agrees to make Incremental Term Loans to the Borrowers, which Incremental Term Loans shall not exceed for any such Additional Lender at the time of any incurrence thereof, the Additional Term Commitment of such Additional Lender for such Class on the respective Incremental Term Loan Borrowing Date. Amounts repaid or prepaid in respect of such Incremental Term Loans may not be reborrowed.

Section 2.02. Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. Each Swingline Loan shall be made in accordance with the procedures set forth in Section 2.04.

(b) Subject to Section 2.13, each Borrowing shall be comprised entirely of ABR Loans or LIBO Rate Loans as the Borrower Representative may request in accordance herewith; provided that each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any LIBO Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that (i) any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement, (ii) such LIBO Rate Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrowers to repay such LIBO Rate Loan shall nevertheless be to such Lender for the account of such domestic or foreign branch or Affiliate of such Lender and (iii) in exercising such option, such Lender shall use reasonable efforts to minimize increased costs to the Borrowers resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.14 shall apply); provided, further, that any such domestic or foreign branch or Affiliate of such Lender shall not be entitled to any greater indemnification under Section 2.16 with respect to such LIBO Rate Loan than that which the applicable Lender was entitled on the date on which such Loan was made (except in connection with any indemnification entitlement arising as a result of a Change in Law after the date on which such Loan was made).

(c) At the commencement of each Interest Period for any LIBO Rate Borrowing, such Borrowing shall comprise an aggregate principal amount that is an integral multiple of $100,000 and not less than $1,000,000. Each ABR Borrowing when made shall be in an integral multiple of $100,000 and not less than $1,000,000; provided that an ABR Revolving Borrowing may be made in a lesser aggregate amount that is (x) equal to the entire aggregate Unused Revolving Credit Commitments or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 different Interest Periods in effect for LIBO Rate Borrowings at any time outstanding (or such greater number of different Interest Periods as the Administrative Agent may agree from time to time).

(d) Notwithstanding any other provision of this Agreement, the Borrowers shall not, nor shall they be entitled to, request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the maturity date applicable to such Loans.

Section 2.03. Requests for Borrowings. To request a Borrowing (other than a Swingline Loan, which is requested pursuant to Section 2.04), the Borrower Representative shall notify the Administrative Agent of such request either in writing by delivery of a Borrowing Request (by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif")) signed by the Borrower Representative or by telephone (a) in the case of a LIBO Rate Borrowing, not later than 1:00 p.m., three Business Days (or, in the case of a LIBO Rate Borrowing to be made on the Closing Date or the Third Amendment Effective Date, two Business Days) before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing (including any such notice of an ABR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e)), not later than 1:00 p.m., one Business Day before the date of the proposed Borrowing (or, in each case, such later time as shall be acceptable to the Administrative Agent). The Borrowers shall be deemed to have requested an ABR Borrowing (without being required to satisfy or being deemed to have satisfied the conditions in Section 4.02) on the fifth Business Day following the making of any Swingline Loan, the proceeds of which shall be applied by the Administrative Agent to repay such Loans. Each such Borrowing Request shall be irrevocable and, if telephonic, shall be confirmed promptly by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif") to the Administrative Agent of a written Borrowing Request signed by a Responsible Officer of the Borrower Representative. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the Class of such Borrowing;

(ii) the aggregate amount of the requested Borrowing;

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be an ABR Borrowing or a LIBO Rate Borrowing;

(v) in the case of a LIBO Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(vi) the location and number of the applicable Borrower's account or any other designated account(s) to which funds are to be disbursed (the "**Funding Account**"); and

(vii) the Borrower or Borrowers for such Borrowing.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested LIBO Rate Borrowing, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04. Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrowers from time to time during the Availability Period, in an aggregate principal amount at any time outstanding not to exceed $5,000,000; provided that (i) after giving effect to such Swingline Loan, the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and LC Exposure shall not exceed the Total Revolving Credit Commitment and (ii) the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Each Swingline Loan shall be in a minimum principal amount of $100,000 or such lesser amount as may be agreed by the Administrative Agent and the Swingline Lender; provided that, notwithstanding the foregoing, a Swingline Loan may be in an aggregate amount that is (x) equal to the entire unused balance of the aggregate Swingline Commitment or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, repay and reborrow Swingline Loans. To request a Swingline Loan, the Borrowers shall notify the Swingline Lender (with a copy to the Administrative Agent) of such request by telephone (confirmed by facsimile), not later than 1:00 p.m. on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day), the amount of the requested Swingline Loan and the Borrower or Borrowers for such Swingline Loan. The Swingline Lender shall make each Swingline Loan available to the Borrowers by means of a credit to the Funding Account or otherwise in accordance with the instructions of the Borrower Representative (including, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e), by remittance to the applicable Issuing Bank) on the requested date of such Swingline Loan.

(b) The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 noon on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or any reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Revolving Loans made by such Revolving Lender (and Section 2.06 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders pursuant to this Section 2.04(b)), and the Administrative Agent shall promptly remit to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower Representative of any participations in any Swingline Loan acquired pursuant to this Section 2.04(b), and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrowers (or other Person on behalf of the Borrowers) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted by the Swingline Lender to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly

remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this Section 2.04(b) and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or the Administrative Agent, as the case may be, and thereafter to the Borrowers, if and to the extent such payment is required to be refunded to the Borrowers for any reason. The purchase of participations in a Swingline Loan pursuant to this Section 2.04(b) shall not relieve the Borrowers of any default in the payment thereof.

(c) The Swingline Lender may at any time in its sole and absolute discretion and shall no later than one per calendar week, request, on behalf of the Borrowers (which hereby irrevocably authorize the Swingline Lender to so request on its behalf), that each Revolving Lender make an ABR Revolving Loan in an amount equal to such Revolving Lender's Applicable Percentage of the amount of all Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Borrowing Request for purposes hereof) and in accordance with the requirements of Section 2.04 without regard to the minimum and multiples specified therein for the principal amount of ABR Loans, but subject to Section 2.01(a) and the conditions set forth in Section 4.02. The Swingline Lender shall furnish Borrower's Representative with a copy of the applicable Borrowing Request promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Borrowing Request available to the Administrative Agent in immediately available funds (and Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender maintained with Administrative Agent not later than 1:00 p.m. on the day specified in such Borrowing Notice, whereupon, each Revolving Lender that so makes funds available shall be deemed to have made an ABR Revolving Loan to the Borrowers in such amount. Administrative Agent shall remit the funds so received to the Swingline Lender.

(d) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04 by the time specified in Section 2.04(b), the Swingline Lender shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Swingline Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (c) shall be conclusive absent manifest error.

Section 2.05. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in each case in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.05, (A) from time to time on any Business Day during the period from the Closing Date to the fifth Business Day prior to the Revolving Credit Maturity Date, upon the request of the Borrower Representative, to issue Letters of Credit issued for the account of any Borrower (or any Subsidiary; provided that a Borrower will be the applicant), and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.05(b), and (B) to honor drafts under the Letters of Credit, and (ii) the Lenders severally agree to participate in the Letters of Credit with respect thereto, issued pursuant to Section 2.05(d).

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower Representative shall deliver to the applicable Issuing Bank and the Administrative Agent, at least five Business Days in advance of the requested date of issuance (or such shorter period as is acceptable to the applicable Issuing Bank), a request to issue a Letter of Credit, which shall specify that it is being issued under this Agreement, in the form of Exhibit G attached hereto. To request an amendment, extension or renewal of a Letter of Credit, the Borrower Representative shall submit such a request to the applicable Issuing Bank (with a copy to the Administrative Agent) at least five Business Days in advance of the requested date of amendment, extension or renewal (or such shorter period as is acceptable to the applicable Issuing Bank), identifying the Letter of Credit to be amended, extended or renewed, and specifying the proposed date (which shall be a Business Day) and other details of the amendment, extension or renewal. Requests for issuance, amendment, extension or renewal must be accompanied by such other information as shall be necessary to issue, amend, extend or renew such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower Representative also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower Representative to, or entered into by the Borrower Representative with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. No Letter of Credit, letter of credit application or other document entered into by the Borrower Representative or any Borrower with the applicable Issuing Bank relating to any Letter of Credit shall (x) contain any representations or warranties, covenants or events of default not set forth in this Agreement (and to the extent inconsistent herewith, shall be rendered null and void) and (y) all representations and warranties, covenants and events of default contained therein shall contain standards, qualifications, thresholds and exceptions for materiality or otherwise consistent with this Agreement (and, to the extent inconsistent herewith, shall be deemed to incorporate such standards, qualifications, thresholds and exceptions contained herein without action by any other party). A Letter of Credit shall be issued, amended, extended or renewed only if (and on issuance, amendment, extension or renewal of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, or renewal, (i) the LC Exposure shall, subject to Section 2.08, not exceed $5,000,000 and (ii) the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and LC Exposure shall not exceed the Total Revolving Credit Commitment. Promptly after the delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower Representative and the Administrative Agent a true and complete copy of such Letter of Credit or amendment. Upon receipt of such Letter of Credit or amendment, the Administrative Agent shall notify the Revolving Lenders, in writing, of such Letter of Credit or amendment, and if so requested by a Revolving Lender, the Administrative Agent will provide such Lender with copies of such Letter of Credit or amendment. Each letter of credit issued or renewed by the Issuing Bank on account of this Agreement shall be conclusively deemed to constitute a Letter of Credit, issued, renewed or delivered in full compliance with this Agreement for all purposes hereunder.

(c) Expiration Date.

(i) Each Standby Letter of Credit shall expire not later than the earlier of (A) the date one year after the date of the issuance of such Letter of Credit (or such longer period of time as may be agreed by the applicable Issuing Bank) and (B) the date that is five Business Days prior to the Revolving Credit Maturity Date; provided that any Standby Letter of Credit with a one year term may in the sole discretion of the Issuing Bank provide for the automatic

extension thereof for any number of additional periods each of one year in duration (none of which, in any event, shall extend beyond the date referred to in clause (B) of this paragraph (c)(i) unless 103% of the then available face amount thereof is Cash collateralized or backstopped pursuant to arrangements reasonably satisfactory to the Issuing Bank thereof).

(ii) Each Commercial Letter of Credit shall expire on the earlier of (A) 180 days after the date of the issuance of such Letter of Credit and (B) the date that is five Business Days prior to the Revolving Credit Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, the applicable Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement.

(i) If the applicable Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the applicable Borrower shall (without duplication) reimburse such LC Disbursement by paying to the Administrative Agent (or, in the case of Commercial Letters of Credit, the applicable Issuing Bank) an amount equal to such LC Disbursement not later than 1:00 p.m. on the Business Day immediately following the date the Borrower Representative receives notice under paragraph (g) of this Section of such LC Disbursement (or, if such notice is received less than two hours prior to the deadline for requesting ABR Borrowings pursuant to Section 2.03, on the second Business Day immediately following the date the Borrower Representative receives such notice); provided that the applicable Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the applicable Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the applicable Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the applicable Borrower in respect thereof and such Revolving Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the applicable Borrower, in the same manner as provided in Section 2.06 with respect to Loans made by such Revolving Lender (and Section 2.06 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay

to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Revolving Lenders and such Issuing Bank as their interests may appear.

(ii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Issuing Bank any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.05(e) by the time specified therein, the Issuing Bank shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Bank at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (ii) shall be conclusive absent manifest error.

(f) Obligations Absolute. The Borrowers' obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, any Borrower's obligations hereunder. Neither the Administrative Agent, the Revolving Lenders, nor any Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank; provided that the foregoing shall not be construed to excuse such Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by the Borrowers that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of applicable Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to

accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower Representative by telephone (confirmed by facsimile) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to Revolving Loans that are ABR Loans; provided that if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.12(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment.

(i) Replacement of an Issuing Bank or Addition of New Issuing Banks. An Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) at any time by written agreement among the Borrower Representative, the Administrative Agent and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.11(b)(iii). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit. The Borrower Representative may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and such Revolving Lender, designate one or more additional Revolving Lenders to act as an issuing bank under the terms of this Agreement. Any Revolving Lender designated as an issuing bank pursuant to this paragraph (i) shall be deemed to be an "Issuing Bank" (in addition to being a Revolving Lender) in respect of Letters of Credit issued or to be issued by such Revolving Lender, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Banks and such Revolving Lender.

(j) Cash Collateralization.

(i) If any Event of Default shall occur and be continuing, then on the Business Day that the Borrower Representative receives notice from the Administrative Agent demanding the deposit of Cash collateral pursuant to this paragraph (j), upon such demand, the

Borrowers shall deposit, in an interest-bearing account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders and the Issuing Banks (the "**LC Collateral Account**"), an amount in Cash equal to 103% of the LC Exposure as of such date; provided that the obligation to deposit such Cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrowers described in Section 7.01(f) or (g).

(ii) Any such deposit under clause (i) above shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations in accordance with the provisions of this paragraph (j). The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account and the Borrowers hereby grant the Administrative Agent for the benefit of the Secured Parties, a first priority security interest in the LC Collateral Account. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time. If the Borrowers are required to provide an amount of Cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (together with all interest and other earnings with respect thereto, to the extent not applied as aforesaid) shall be returned to the Borrowers promptly but in no event later than three Business Days, after such Event of Default has been cured or waived.

Section 2.06. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m. to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's respective Applicable Percentage; provided that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrowers by promptly crediting the amounts so received, in like funds, to the Funding Account or as otherwise directed by the Borrower Representative; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent,

then such amount shall constitute such Lender's Loan included in such Borrowing and the Borrowers' obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 2.06(b) shall cease. If the Borrowers pay such amount to the Administrative Agent, the amount so paid shall constitute a repayment of such Borrowing by such amount. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrowers or any other Loan Party may have against any Lender as a result of any default by such Lender hereunder.

Section 2.07. Type; Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a LIBO Rate Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrowers may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a LIBO Rate Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders, based upon their Applicable Percentages and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Loans, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election either delivered in writing (by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif")) or by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower Representative were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and, if telephonic, shall be confirmed promptly by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif") to the Administrative Agent of a written Interest Election Request signed by a Responsible Officer of the Borrower Representative.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a LIBO Rate Borrowing; and

(iv) if the resulting Borrowing is a LIBO Rate Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a LIBO Rate Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a LIBO Rate Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a LIBO Rate Borrowing with an Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a LIBO Rate Borrowing and (ii) unless repaid, each LIBO Rate Borrowing shall be converted to an ABR Borrowing at the end of the then-current Interest Period applicable thereto.

Section 2.08. Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Closing Date Term Commitments shall automatically terminate upon the making of the Closing Date Term Loans on the Closing Date and (ii) the Revolving Credit Commitments shall terminate on the Revolving Credit Maturity Date.

(b) Upon delivering the notice required by Section 2.08(d), the Borrower Representative may at any time terminate the Revolving Credit Commitments upon (i) the payment by the Borrowers in full in Cash of all outstanding Revolving Loans and Swingline Loans, together with accrued and unpaid interest thereon, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a Cash deposit (or if reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank, a backup standby letter of credit) equal to 103% of the LC Exposure as of such date) and (iii) the payment in full of all accrued and unpaid fees and all reimbursable expenses and other non-contingent Obligations with respect to the Revolving Facility then due, together with accrued and unpaid interest (if any) thereon.

(c) Upon delivering the notice required by Section 2.08(d), the Borrower Representative may from time to time reduce the Revolving Credit Commitments; provided that (i) each reduction of the Revolving Credit Commitments shall be in an amount that is an integral multiple of $1,000,000 and not less than $1,000,000 and (ii) the Borrower Representative shall not reduce the Revolving Credit Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans or repayment of Swingline Loans in accordance with Section 2.09 or Section 2.10, the Aggregate Revolving Credit Exposure would exceed the Total Revolving Credit Commitment.

(d) The Borrower Representative shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) or (c) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Revolving Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Credit Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Revolving Credit Commitments pursuant to this Section 2.08 shall be permanent. Upon any reduction of the Revolving

Credit Commitments, the Revolving Credit Commitment of each Revolving Lender shall be reduced by such Revolving Lender's Applicable Percentage of such reduction amount.

Section 2.09. Repayment of Loans; Evidence of Debt.

(a) The Borrowers hereby unconditionally promise to repay the Term Loans to the Administrative Agent for the account of each then existing Term Lender:

(i) commencing on the last day of the first full Fiscal Quarter ended after the Closing Date, in each case, on the last day of each March, June, September and December prior to the Term Loan Maturity Date (each such date being referred to as a "**Loan Installment Date**"), in an amount equal to:

(1) prior to the First Amendment Effective Date, 0.625% of the original principal amount of the Closing Date Term Loan (as such payments may be reduced from time to time as a result of the application of prepayments in accordance with Section 2.10 and Section 9.05(g) or increased as a result of any increase in the amount of such Closing Date Term Loans pursuant to Section 2.21(a));

(2) on and after the First Amendment Effective Date but prior to the Third Amendment Effective Date, $1,743,671 (as such payments may be reduced from time to time as a result of the application of prepayments in accordance with Section 2.10 and Section 9.05(g) or increased as a result of any increase in the amount of such Term Loans pursuant to Section 2.21(a));

(3) on and after the Third Amendment Effective Date, commencing with the Loan Installment Date on March 31, 2018, (A) in the case of the Term A Loan 0.6925% of the original principal amount of the Term A Loan as of the Third Amendment Effective Date (as such payments may be reduced from time to time as a result of the application of prepayments in accordance with Section 2.10 and Section 9.05(g) or increased as a result of any increase in the amount of the Term A Loan pursuant to Section 2.21(a)), and (B) in the case of the Term B Loan 0.25% of the original principal amount of the Term B Loan as of the Third Amendment Effective Date (as such payments may be reduced from time to time as a result of the application of prepayments in accordance with Section 2.10 and Section 9.05(g) or increased as a result of any increase in the amount of the Term B Loan pursuant to Section 2.21(a)); and

(ii) on the Term Loan Maturity Date, the remainder of the principal amount of the Term Loans outstanding on such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

(b) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Revolving Credit Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Credit Maturity Date. On the Revolving Credit

Maturity Date, the Borrowers shall cancel and return all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, furnish to the Administrative Agent a Cash deposit (or if reasonably satisfactory to the relevant Issuing Bank, a backup standby letter of credit) equal to 103% of the LC Exposure as of such date) and make payment in full in Cash of all accrued and unpaid fees and all reimbursable expenses and other Obligations with respect to the Revolving Facility then due, together with accrued and unpaid interest (if any) thereon.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement; provided, further, that in the event of any inconsistency between the accounts maintained by the Administrative Agent pursuant to paragraph (d) of this Section and any Lender's records, the accounts of the Administrative Agent shall govern.

(f) Any Lender may request that Loans made by it be evidenced by a Promissory Note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a Promissory Note payable to such Lender and its registered assigns. Thereafter, the Loans evidenced by such Promissory Note and interest thereon shall at all times (including after assignment pursuant to Section 9.05) be represented by one or more Promissory Notes in such form payable to the payee named therein and its registered assigns.

Section 2.10. Prepayment of Loans.

(a) Optional Prepayments.

(i) Upon prior notice in accordance with paragraph (a)(iii) of this Section, the Borrowers shall have the right at any time and from time to time to prepay any Borrowing of Term Loans in whole or in part without premium or penalty (but subject to Sections 2.11(e) and 2.15). Each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages and except as may otherwise be set forth in any amendment to this Agreement in connection with any Additional Term Loan, each prepayment of Term Loans pursuant to this Section 2.10(a) shall be applied ratably to each Class of Term Loans (based upon the then outstanding principal amounts of the respective Classes of Term Loans); provided, however, that following the consummation of a Qualifying IPO, the Borrowers may prepay the Term B Loans without making a corresponding prepayment of Term A Loans so long as, after giving effect to such prepayment, the Total Leverage Ratio would not exceed 2.00 to 1.00,

calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01.

(ii) Upon prior notice in accordance with paragraph (a)(iii) of this Section, the Borrowers shall have the right at any time and from time to time to prepay any Borrowing of Revolving Loans or Swingline Loans, in whole or in part without premium or penalty (but subject to Section 2.15). Prepayments made pursuant to this Section 2.10(a)(ii), first, shall be applied ratably to the Swingline Loans and to outstanding LC Disbursements and second, shall be applied ratably to the outstanding Revolving Loans.

(iii) The Borrower Representative shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed in writing substantially in the form of Exhibit C or such other form reasonably acceptable to the Administrative Agent) of any prepayment hereunder (A) in the case of prepayment of a LIBO Rate Borrowing, not later than 12:00 noon three Business Days before the date of prepayment, (B) in the case of prepayment of an ABR Borrowing, not later than 12:00 noon one Business Day before the date of prepayment or (C) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m. on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that a notice of prepayment delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the relevant Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.02(c). Each prepayment of Term Loans made pursuant to this Section 2.10(a) shall be applied against the remaining scheduled installments of principal due in respect of the Term Loans of such Class in the manner specified by the Borrower Representative or, if not so specified on or prior to the date of such optional prepayment, in direct order of maturity.

(b) Mandatory Prepayments.

(i) No later than the fifth Business Day after the date on which the financial statements with respect to each Fiscal Year of the Borrowers are required to be delivered pursuant to Section 5.01(b), commencing with the Fiscal Year ending on December 31, 2018, the Borrowers shall prepay the outstanding Term Loans and Additional Term Loans in accordance with clause (~~vi~~vii) of this Section 2.10(b) in an aggregate principal amount equal to (A) 50% of Excess Cash Flow for Holdings and its Subsidiaries on a consolidated basis for the Fiscal Year then ended, *minus* (B) at the option of the Borrowers, the aggregate principal amount of any Term Loans, Additional Term Loans, Revolving Loans or Additional Revolving Loans prepaid pursuant to Section 2.10(a) prior to such date (excluding any such optional prepayments made during such Fiscal Year that were deducted from the amount required to be prepaid pursuant to this Section 2.10(b)(i) in the prior Fiscal Year) (in the case of any such revolving loans prepaid, to the extent accompanied by a permanent reduction in the relevant commitment, and in the case of all such prepayments, to the extent that such prepayments were not financed with the proceeds of other Indebtedness of the Borrowers or their Subsidiaries); provided that with respect to any Fiscal Year, such percentage of Excess Cash Flow shall be reduced to 25% or 0% of Excess Cash Flow if the Total Leverage Ratio calculated on a Pro Forma Basis as of the last day of such Fiscal

Year (but without giving effect to the payment required hereby) shall be less than or equal to 2.25:1.00 or 1.50:1.00, respectively.

(ii) No later than the fifth Business Day following the receipt by Holdings or any Subsidiary of Net Proceeds in respect of any Prepayment Asset Sale or Net Insurance/Condemnation Proceeds, in each case, in excess of $2,500,000 in the aggregate in any Fiscal Year, the Borrowers shall apply an amount equal to 100% of the Net Proceeds or Net Insurance/Condemnation Proceeds received with respect thereto in excess of such thresholds to prepay the outstanding principal amount of Term Loans and Additional Term Loans in accordance with clause (~~vi~~vii) of this Section 2.10(b); provided that if prior to the date any such prepayment is required to be made, the Borrower Representative notifies the Administrative Agent of the Borrowers' intention to reinvest such Net Proceeds or Net Insurance/Condemnation Proceeds in assets used or useful in the business of the Combined Group, then so long as no Event of Default then exists, the Borrowers shall not be required to make a mandatory prepayment under this clause (ii) in respect of such Net Proceeds or Net Insurance/Condemnation Proceeds to the extent such Net Proceeds or Net Insurance/Condemnation Proceeds are so reinvested within 12 months following receipt thereof, or if Holdings, any Borrower or any of Holdings' Subsidiaries has committed to so reinvest such Net Proceeds or Net Insurance/Condemnation Proceeds during such 12-month period and such Net Proceeds or Net Insurance/Condemnation Proceeds are so reinvested within six months after the expiration of such 12-month period; provided, however, that if any Net Proceeds or Net Insurance/Condemnation Proceeds have not been so reinvested prior to the expiration of the applicable period, the Borrowers shall promptly prepay Term Loans in an amount equal to the Net Proceeds or Net Insurance/Condemnation Proceeds not so reinvested as set forth above (without regard to the immediately preceding proviso); provided, further, that if, at the time that any such prepayment would be required hereunder, the Borrowers are required to offer to repurchase any other Indebtedness secured on a *pari passu* basis (or any Refinancing Indebtedness in respect thereof that is secured on a *pari passu* basis with the Obligations) pursuant to the terms of the documentation governing such Indebtedness with Net Proceeds (such Indebtedness (or Refinancing Indebtedness in respect thereof) required to be offered to be so repurchased, the "**Other Applicable Indebtedness**"), then the Borrowers may apply such Net Proceeds or Net Insurance/Condemnation Proceeds on a *pro rata* basis to the prepayment of the Term Loans and Additional Term Loans and to the repurchase or prepayment of the Other Applicable Indebtedness (determined on the basis of the aggregate outstanding principal amount of the Term Loans, Additional Term Loans and Other Applicable Indebtedness (or accreted amount if such Other Applicable Indebtedness is issued with OID) at such time; provided that the portion of such Net Proceeds or Net Insurance/Condemnation Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Net Proceeds or Net Insurance/Condemnation Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Proceeds or Net Insurance/Condemnation Proceeds shall be allocated to the Term Loans and Additional Term Loans in accordance with the terms hereof), and the amount of prepayment of the Term Loans and Additional Term Loans that would have otherwise been required pursuant to this Section 2.10(b)(ii) shall be reduced accordingly; provided, further, that to the extent the holders of the Other Applicable Indebtedness decline to have such Indebtedness repurchased, the declined amount shall promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans and Additional Term Loans in accordance with the terms hereof.

(iii) In the event that Holdings or any of its Subsidiaries shall receive Net Proceeds from the issuance or incurrence of Indebtedness of Holdings or any of its Subsidiaries (other than with respect to Indebtedness permitted under Section 6.01, except to the extent constituting Refinancing Indebtedness incurred to refinance all or a portion of the Term Loans or Additional Term Loans pursuant to Section 6.01(p) or Replacement Term Loans incurred to refinance Term Loans or Additional Term Loans in accordance with the requirements of Section 9.02(c)), the Borrowers shall, substantially simultaneously with (and in any event not later than the next succeeding Business Day) the receipt of such Net Proceeds by Holdings or such Subsidiary, apply an amount equal to 100% of such Net Proceeds to prepay the outstanding principal amount of Term Loans and Additional Term Loans in accordance with clause (~~vi~~vii) of this Section 2.10(b).

(iv) In the event that Holdings exercises the Cure Right pursuant to Section 6.16(b), the Borrowers shall, within three Business Days following the receipt by Holdings of the applicable Cure Amount, apply an amount equal to 100% of the Cure Amount to prepay the outstanding principal amount of Term Loans and Additional Term Loans in accordance with clause (vii) of this Section 2.10(b).

(v) ~~(iv)~~ Notwithstanding any provision under this Section 2.10(b) to the contrary, (A) any amounts that would otherwise be required to be paid by the Borrowers pursuant to Section 2.10(b)(i) or (ii) above shall not be required to be so prepaid to the extent any such Excess Cash Flow is generated by a Foreign Subsidiary, such Prepayment Asset Sale is consummated by a Foreign Subsidiary, such Net Insurance/Condemnation Proceeds are received by a Foreign Subsidiary, as the case may be, for so long as the repatriation to the United States of any such amounts would be prohibited under any Requirement of Law (the applicable Borrower agreeing to cause the applicable Foreign Subsidiary to promptly take all actions commercially reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds, Net Insurance/Condemnation Proceeds or Excess Cash Flow is permitted under the applicable Requirement of Law, such repatriation will be immediately effected and such repatriated Net Proceeds, Net Insurance/Condemnation Proceeds or Excess Cash Flow will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional Taxes (including any Tax Distributions) payable or reserved against as a result thereof) to the repayment of the Term Loans and Additional Term Loans pursuant to this Section 2.10(b) to the extent provided herein; and (B) if the Borrower Representative determines in good faith that the repatriation to the United States of any amounts required to mandatorily prepay the Term Loans and Additional Term Loans pursuant to Section 2.10(b)(i) or (ii) above would result in adverse Tax consequences, taking into account any foreign Tax credit or benefit actually realized in connection with such repatriation (such amount, a "**Restricted Amount**"), as reasonably determined by the Borrower Representative, the amount the Borrowers shall be required to mandatorily prepay pursuant to Section 2.10(b)(i) or (ii) above, as applicable, shall be reduced by the Restricted Amount until such time as it may repatriate to the United States such Restricted Amount without incurring such adverse Tax liability; provided that, in the case of this clause (B), on or before the date on which any Net Proceeds or Net Insurance/Condemnation Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to this Section 2.10(b), (x) the Borrowers shall apply an amount equal to such Net Proceeds or Net Insurance/Condemnation Proceeds to such reinvestments or prepayments as if such Net Proceeds or Net Insurance/Condemnation Proceeds had been received by the Borrowers rather than such Foreign Subsidiary, less the amount of additional Taxes (including any Tax Distributions) that

would have been payable or reserved against it if such Net Proceeds or Net Insurance/Condemnation Proceeds had been repatriated to the United States by such Foreign Subsidiary or (y) such Net Proceeds or Net Insurance Condemnation Proceeds shall be applied to the repayment of Indebtedness of the applicable Foreign Subsidiary; provided, further, that to the extent that the repatriation of any Net Proceeds, Net Insurance/Condemnation Proceeds or Excess Cash Flow from such Foreign Subsidiary would no longer have an adverse Tax consequence, an amount equal to the Net Proceeds, Net Insurance/Condemnation Proceeds or Excess Cash Flow, as applicable, not previously applied pursuant to preceding clauses (x) and (y), shall be promptly applied to the repayment of the Term Loans and Additional Term Loans pursuant to Section 2.10(b) as otherwise required above (without regard to this clause (~~iv~~v)).

(vi) ~~(v)~~ Each Lender may elect, by notice to the Administrative Agent at or prior to the time and in the manner specified by the Administrative Agent, prior to any prepayment of Term Loans and Additional Term Loans required to be made by the Borrowers pursuant to this Section 2.10(b), to decline all (but not a portion) of its Applicable Percentage of such prepayment (such declined amounts, the "**Declined Proceeds**"), in which case such Declined Proceeds may be retained by the Borrowers and shall be added (without duplication) to the calculation of the Available Amount in accordance with the definition thereof; provided, further, that, for the avoidance of doubt, no Lender may reject any prepayment made under Section 2.10(b)(iii) above to the extent constituting Refinancing Indebtedness incurred to refinance all or a portion of the Term Loans or Additional Term Loans pursuant to Section 6.01(p) or Replacement Term Loans incurred to refinance Term Loans or Additional Term Loans in accordance with the requirements of Section 9.02(c). If a Lender fails to deliver a notice of election declining receipt of its Applicable Percentage of such mandatory prepayment to the Administrative Agent within the time frame specified by the Administrative Agent, any such failure will be deemed to constitute an acceptance of such Lender's Applicable Percentage of the total amount of such mandatory prepayment of Term Loans and Additional Term Loans.

(vii) ~~(vi)~~ Except as may otherwise be set forth in any amendment to this Agreement in connection with any Additional Term Loan, (A) each prepayment of Term Loans pursuant to this Section 2.10(b) shall be applied ratably to each Class of Term Loans (based upon the then outstanding principal amounts of the respective Classes of Term Loans) (provided that any prepayment of Term Loans constituting Refinancing Indebtedness incurred to refinance all or a portion of the Term Loans pursuant to Section 6.01(p) or Replacement Term Loans incurred to refinance Term Loans in accordance with the requirements of Section 9.02(c) shall be applied solely to each applicable Class of refinanced or replaced Term Loans), (B) with respect to each Class of Term Loans, all accepted prepayments under Section 2.10(b)(i), (ii) ~~or~~, (iii) or (iv) shall be applied first against the next 6 scheduled installments of principal due in respect of the Term Loans in direct order of maturity until such installments are paid in full and then against remaining scheduled installments of principal due in respect of the Term Loans on a *pro rata* basis, and (C) each such prepayment shall be paid to the Term Lenders in accordance with their respective Applicable Percentage. The amount of such mandatory prepayments shall be applied on a *pro rata* basis to the then outstanding Term Loans being prepaid irrespective of whether such outstanding Loans are ABR Loans or LIBO Rate Loans; provided that the amount thereof shall be applied first to ABR Loans to the full extent thereof before application to the LIBO Rate Loans.

(viii) ~~(vii)~~ In the event and on each Business Day on which the Aggregate Revolving Credit Exposure exceeds the Total Revolving Credit Commitments, the Borrowers shall prepay the Revolving Loans or Swingline Loans and/or reduce LC Exposure, in an

aggregate amount equal to such excess by taking any of the following actions as it shall determine at its sole discretion: (A) prepayment of Revolving Loans or Swingline Loans or (B) with respect to such excess LC Exposure, deposit of Cash in the LC Collateral Account or "backstopping" or replacement of such Letters of Credit, in each case, in an amount equal to 103% of such excess LC Exposure (but in any event, such payments of Revolving Loans or Swingline Loans and such deposits of Cash or "backstopping" or replacements of Letters of Credit shall in the aggregate be equal to such excess) and pursuant to arrangements (and with "backstop" letter of credit issuers) reasonably acceptable to the applicable Issuing Banks.

(ix) ~~(viii)~~ The Borrower Representative shall deliver to the Administrative Agent, at the time of each prepayment required under Section 2.10(b)(i), (ii) ~~or~~, (iii) or (iv), a certificate signed by a Responsible Officer of the Borrower Representative setting forth in reasonable detail the calculation of the amount of such prepayment. Each such certificate shall specify the Borrowings being prepaid and the principal amount of each Borrowing (or portion thereof) to be prepaid. Prepayments shall be accompanied by accrued interest as required by Section 2.12. All prepayments of Borrowings under this Section 2.10(b) shall be subject to Section 2.11(e) (in the case of prepayments under clause (iii) above as part of a Repricing Transaction) and Section 2.15, but shall otherwise be without premium or penalty.

Section 2.11. Fees.

(a) The Borrowers agree to pay to the Administrative Agent for the account of each Revolving Lender (other than a Defaulting Lender) a commitment fee, which shall accrue at a rate equal to the Commitment Fee Rate per annum on the average daily amount of the Unused Revolving Credit Commitment of such Revolving Lender during the period from and including the Closing Date to the date on which such Lender's Revolving Credit Commitments terminate. Accrued commitment fees shall be payable in arrears on the last day of each March, June, September and December for the quarterly period then ended and on the date on which the Revolving Credit Commitments terminate. For purposes of calculating the commitment fees only, no portion of the Revolving Credit Commitments shall be deemed utilized as a result of outstanding Swingline Loans.

(b) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender (other than a Defaulting Lender) a participation fee with respect to its participations in Standby Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to LIBO Rate Revolving Loans on the daily face amount of such Lender's LC Exposure in respect of Standby Letters of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements), during the period from and including the Closing Date through the later of the date on which such Revolving Lender's Revolving Credit Commitment terminates and the date on which such Revolving Lender ceases to have any LC Exposure in respect of Standby Letters of Credit, (ii) to the Administrative Agent for the account of each Revolving Lender (other than a Defaulting Lender) a participation fee with respect to its participations in Commercial Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to LIBO Rate Revolving Loans, on the daily face amount of such Lender's LC Exposure in respect of Commercial Letters of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements), during the period from and including the Closing Date to the later of the date on which such Revolving Lender's Revolving Credit Commitment terminates and the date on which such Revolving Lender ceases to have any LC Exposure in respect of Commercial Letters of Credit, and (iii) to each Issuing Bank, for its own account, a fronting fee, in respect of each Letter of Credit issued by such Issuing Bank for the period from the date of issuance of such Letter of Credit to the expiration date of such Letter of Credit (or if terminated on an

earlier date, to the termination date of such Letter of Credit), computed at a rate equal to 0.125% per annum (or such other rate not to exceed 0.125% per annum as may be agreed to by such Issuing Bank and the Borrower Representative) of the daily face amount of such Letter of Credit, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued to but excluding the last day of each March, June, September and December shall be payable in arrears for the quarterly period then ended on the last day of such calendar quarter; provided that all such fees shall be payable on the date on which the Revolving Credit Commitments terminate and any such fees accruing after the date on which the Revolving Credit Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 30 days after receipt of a written demand (accompanied by reasonable back-up documentation therefor).

(c) The Borrowers agree to pay to the Administrative Agent, for its own account, the fees set forth in the Fee Letter, payable in the amounts and at the times specified therein or as so otherwise agreed upon by the Borrower Representative and the Administrative Agent, or such agency fees as may otherwise be separately agreed upon by the Borrower Representative and the Administrative Agent in writing.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Revolving Lenders.

(e) In the event that, on or prior to the date that is six months after the Third Amendment Effective Date, the Borrowers (x) prepay, repay, refinance, substitute or replace any Term B Loans in connection with a Repricing Transaction (including, for the avoidance of doubt, any prepayment made pursuant to Section 2.11(b)(iii) that constitutes a Repricing Transaction), or (y) effect any amendment, waiver or other modification of, or consent under, this Agreement resulting in a Repricing Transaction, the Borrowers shall pay to the Administrative Agent, for the ratable account of each of the applicable Lenders (including, if applicable, any Non-Consenting Lender), (I) in the case of clause (x), a premium of 1.00% of the aggregate principal amount of the Term B Loans so prepaid, repaid, refinanced, substituted or replaced and (II) in the case of clause (y), a fee equal to 1.00% of the aggregate principal amount of the applicable Term B Loans so amended, modified or waived. If, on or prior to the date that is six months after the Third Amendment Effective Date (and without duplication of the preceding sentence), all or any portion of the Term B Loans held by any Lender are prepaid, repaid, refinanced, substituted or replaced pursuant to Section 2.18 as a result of, or in connection with, such Lender not agreeing or otherwise consenting to any waiver, consent or amendment referred to in clause (y) above (or otherwise in connection with a Repricing Transaction), such prepayment, repayment, refinancing, substitution or replacement will be made at 101.0% of the principal amount so prepaid, repaid, refinanced, substituted or replaced. All such amounts shall be due and payable on the date of effectiveness of such Repricing Transaction.

(f) Unless otherwise indicated herein, all computations of fees shall be made on the basis of a 360-day year (or 365/366 days in the case of ABR Loans the interest payable on which is then based on the Prime Rate) and shall be payable for the actual days elapsed (including the first day but excluding the last day). Each determination by the Administrative Agent of a fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.12. Interest.

(a) The Term Loans and Revolving Loans comprising each ABR Borrowing (and Swingline Loans) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Term Loans and Revolving Loans comprising each LIBO Rate Borrowing shall bear interest at the LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee payable by the Borrowers hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, to the fullest extent permitted by law, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal or interest of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or in the amendment to this Agreement relating thereto or (ii) in the case of any other amount, 2% plus the rate applicable to Revolving Loans that are ABR Loans as provided in paragraph (a) of this Section; provided that no amount shall be payable pursuant to this Section 2.12(c) to a Defaulting Lender so long as such Lender shall be a Defaulting Lender; provided, further that no amounts shall accrue pursuant to this Section 2.12(c) on any overdue amount, reimbursement obligation in respect of any LC Disbursement or other amount payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(d) Accrued interest on each Loan shall be payable in arrears on (w) each Interest Payment Date for such Loan, (x) upon the Maturity Date, (y) termination of the Revolving Credit Commitments and (z) each other maturity date or termination of any Additional Loans, as applicable; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan or Swingline Loan prior to the termination of the relevant revolving Commitments), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any LIBO Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Term Loan, Revolving Loan or Additional Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed for ABR Loans based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid within the time periods specified herein; provided that any Loan that is repaid on the same day on which it is made shall bear interest for one day.

~~Section 2.13. Alternate Rate of Interest. If at least two Business Days prior to the commencement of any Interest Period for a LIBO Rate Borrowing:~~

Section 2.13. ~~(a)~~ Alternate Rate of Interest. If, at any time, the Administrative Agent determines (which determination shall be conclusive absent manifest error) ~~that~~, or, solely with respect to the circumstances described in clause (b) of this Section, the Required Lenders notify the Administrative

Agent (with a copy to the Borrower Representative) that the Required Lenders have determined, that for any reason:

(a) adequate and reasonable means do not exist for ~~ascertaining~~determining the LIBO Rate~~, as applicable,~~ for ~~such~~any requested Interest Period~~; or~~ with respect to a proposed LIBO Rate Loan (including because the applicable LIBO Rate is not available or published on a current basis);

(b) ~~the Administrative Agent is advised by the Required Lenders that~~ the LIBO Rate for ~~such~~any requested Interest Period ~~will~~with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to ~~such~~the Lenders of making or maintaining ~~their Loans included in such Borrowing for such Interest Period~~such LIBO Rate Loan;

(c) deposits in Dollars (in the applicable amounts) are not being offered to the Administrative Agent in the London Interbank Offered Rate market for any requested Interest Period with respect to a proposed LIBO Rate Loan; or

(d) the making or funding of LIBO Rate Loans has become impracticable;

then the Administrative Agent ~~shall~~will promptly ~~give notice thereof to~~notify the Borrower ~~Representative and the Lenders by telephone or facsimile as promptly as practicable thereafter and,~~and all Lenders. Thereafter, (i) the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended and (ii) the LIBO Rate shall no longer be utilized in determining the Alternate Base Rate, in each case until the Administrative Agent ~~notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist, which the Administrative Agent agrees promptly to do, (i) any Interest Election Request that requests the conversion of any~~revokes such notice. Upon receipt of any such notice, any Borrower may revoke any pending request for a Borrowing of, conversion to~~,~~ or continuation of ~~any Borrowing as, a LIBO Rate Borrowing shall be ineffective and such Borrowing shall be converted to an ABR Borrowing on the last day of the Interest Period applicable thereof, and (ii) if any Borrowing Request requests a LIBO Rate Borrowing, such Borrowing shall be made as an ABR Borrowing.~~LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans in the amount specified therein.

Section 2.14. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the LIBO Rate) or Issuing Bank; or

(ii) impose on any Lender or Issuing Bank or the London interbank market any other condition affecting this Agreement or LIBO Rate Loans made by such Lender or any Letter of Credit or participation therein;

(iii) subject any Lender or Issuing Bank or the Administrative Agent to Taxes (other than (A) Indemnified Taxes, (B) Taxes described in (c) through (e) of the definition of Excluded Taxes, (C) Connection Income Taxes and (D) Other Taxes) on its basis, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto.

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBO Rate Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise) in respect of any LIBO Rate Loan, Letter of in an amount deemed by such Lender or Issuing Bank to be material, then, within 30 days after the Borrower Representative's receipt of the certificate contemplated by paragraph (c) of this Section, the Borrowers will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered; provided that the Borrowers shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) the Lender invokes Section 2.19 or (z) in the case of requests for reimbursement under clause (ii) above resulting from a market disruption, such circumstances are not generally affecting the banking market.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy), then within 30 days of receipt by the Borrower Representative of the certificate contemplated by paragraph (c) of this Section the Borrowers will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section and setting forth in reasonable detail the manner in which such amount or amounts was determined and certifying that such Lender is generally charging such amounts to similarly situated borrowers shall be delivered to the Borrower Representative and shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding the foregoing, this Section 2.14 should not apply to Taxes, which should be governed exclusively by Section 2.16.

Section 2.15. Break Funding Payments. In the event of (a) the continuation, conversion, payment or prepayment of any principal of any LIBO Rate Loan other than on the last day of an Interest

Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise), (b) the failure to borrow, convert, continue or prepay any LIBO Rate Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any LIBO Rate Loan of any Lender other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.18, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of profit). For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 2.15, each Lender shall be deemed to have funded each LIBO Rate Loan made by it at the LIBO Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market or the European interbank market, respectively, for a comparable amount and for a comparable period, whether or not such LIBO Rate Loan was in fact so funded. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and the basis therefor and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

Section 2.16. Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if a Loan Party or other applicable withholding agent shall be required to deduct any Taxes from such payments, then (i) in the case of Indemnified Taxes or Other Taxes, the amount payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, any Lender, the Swingline Lender or any Issuing Bank (as applicable) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party or applicable withholding agent shall make such deductions and (iii) such Loan Party or applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law. If at any time a Loan Party or other applicable withholding agent is required by applicable law to make any deduction or withholding from any amount payable hereunder, such Loan Party or other applicable withholding agent shall promptly notify the relevant Lender, the Swingline Lender or Issuing Bank or the Administrative Agent upon becoming aware of the same.

(b) In addition, the Loan Parties shall pay or, at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Loan Party shall indemnify the Administrative Agent, each Lender, the Swingline Lender and each Issuing Bank within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, the Swingline Lender or such Lender or Issuing Bank, as applicable, on or with respect to any payment by or any payment on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties (other than any penalties resulting from any action or inaction of the Administrative Agent, the Swingline Lender, such Lender or Issuing Bank), interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that if the Loan Party reasonably believes that such Taxes were not correctly or legally asserted, the Administrative Agent, the Swingline Lender,

Lender or Issuing Bank, as applicable, will use reasonable efforts to cooperate with the Loan Party to obtain a refund of such Taxes (which shall be repaid to the Loan Party in accordance with Section 2.16(f)) so long as such efforts would not, in the sole determination of the Administrative Agent, the Swingline Lender or such Lender or Issuing Bank, result in any additional out-of-pocket costs or expenses not reimbursed by the Loan Party or be otherwise materially disadvantageous to the Administrative Agent, the Swingline Lender or such Lender or Issuing Bank, as applicable; provided, further, that, the Loan Party shall not be required to compensate the Administrative Agent, the Swingline Lender, any Lender or any Issuing Bank pursuant to this Section 2.16 for any amounts incurred in any fiscal year for which the Administrative Agent, the Swingline Lender or such Lender or Issuing Bank does not furnish notice of such claim within six months from the end of such fiscal year; provided, further, that if the circumstances giving rise to such claim have a retroactive effect (*e.g.*, in connection with the audit of a prior tax year), then the beginning of such six month period shall be extended to include such period of retroactive effect. A certificate setting forth in reasonable detail the amount of such payment or liability delivered to the Borrower Representative by a Lender, an Issuing Bank, the Swingline Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, the Swingline Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, 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.

(e) 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 Representative 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 Representative 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 Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable Requirements of Law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrower Representative 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 2.16(e)(ii)(A), (ii)(B) and (ii)(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.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is not a Foreign Lender shall, to the extent legally entitled to do so, deliver to the Borrower Representative 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

Representative or the Administrative Agent), two executed originals 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 legally entitled to do so, deliver to the Borrower Representative 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 Representative 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 originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN 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 originals 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 of Exhibit H-1 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 any 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 originals of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, 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 of Exhibit H-4 on behalf of each such direct or indirect partner;

(C) any Foreign Lender shall, to the extent legally entitled to do so, deliver to the Borrower Representative 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 Representative or the Administrative Agent), executed originals of any other form prescribed by applicable Requirements of 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 Requirements of Law to permit the Borrower Representative 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 Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrowers 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 Representative and the Administrative Agent in writing of its legal inability to do so.

(f) If the Administrative Agent, the Swingline Lender or a Lender or Issuing Bank determines, in its good faith and reasonable discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.16, it shall promptly pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.16 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, the Swingline Lender, such Lender or Issuing Bank (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent, the Swingline Lender, such Lender or Issuing Bank in good faith in its reasonable discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the written request of the Administrative Agent, the Swingline Lender, such Lender or Issuing Bank, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, the Swingline Lender, such Lender or Issuing Bank in the event the Administrative Agent, the Swingline Lender, such Lender or Issuing Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the Administrative Agent, the Swingline Lender, a Lender or an Issuing Bank be required to pay any amount to a Loan Party pursuant to this paragraph (f) to the extent that the payment of which would place the Administrative Agent, the Swingline Lender, Lender or Issuing Bank in a less favorable net after-Tax position than the Administrative Agent, the Swingline Lender, Lender or Issuing Bank would have been in if the Tax subject to indemnification had not been

deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section shall not be construed to require the Administrative Agent, the Swingline Lender, any Lender or any Issuing Bank to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to such Loan Party or any other Person.

(g) A Lender shall indemnify the Administrative Agent within 30 days after written demand therefor (with copy to the Administrative Agent), for the full amount of (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.05(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent and any penalties (other than any penalties resulting from any action or inaction of the Administrative Agent), interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the amount of such payment or liability delivered to the Lender by the Administrative Agent or the Borrower Representative on behalf of the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative 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 Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent this paragraph (g).

(h) Each party's obligations under this Section 2.16 shall survive the resignation or replacement of the Administrative 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 2.17. Payments Generally; Allocation of Proceeds; Sharing of Set-offs.

(a) Unless otherwise specified, the Borrowers shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.14, 2.15 or 2.16, or otherwise) prior to the time expressed hereunder or under such Loan Document (or, if no time is expressly required, by 2:00 p.m. on the date when due, in immediately available funds, without set-off (except as otherwise provided in Section 2.16) or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower Representative by the Administrative Agent, except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15 or 2.16 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as expressly provided elsewhere in the Agreement (including in Section 2.19 and with respect to Swingline Loans), each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans of a given Class and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type (and of the same Class) shall be allocated *pro rata* among the Lenders in accordance with their respective Applicable Percentages. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the

Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount. All payments hereunder shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) All proceeds of Collateral received by the Administrative Agent after an Event of Default has occurred and is continuing and all or any portion of the Loans shall have been accelerated hereunder pursuant to Section 7.01, shall, upon election by the Administrative Agent or at the direction of the Required Lenders, be applied, first, on a *pro rata* basis, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent, the Swingline Lender or any Issuing Bank from the Borrowers constituting Obligations, second, on a *pro rata* basis, to pay any fees, indemnities or expense reimbursements then due to the Lenders from the Borrowers constituting Obligations, third, to pay interest due and payable in respect of any Loans and unreimbursed LC Disbursements, on a *pro rata* basis, fourth, to pay principal on the Loans and unreimbursed LC Disbursements, the Banking Services Obligations and the Secured Hedging Obligations, on a *pro rata* basis among the Secured Parties, fifth, to pay an amount to the Administrative Agent equal to 103% of the LC Exposure on such date, to be held in the LC Collateral Account as Cash collateral for such Obligations, on a *pro rata* basis, sixth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers on a *pro rata* basis, and seventh, to the Borrowers or as the Borrower Representative shall direct.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans of any Class resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements or Swingline Loans of such Class and accrued interest thereon than the proportion received by any other Lender with Loans of such Class, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans and sub-participations in LC Disbursements or Swingline Loans of other Lenders of such Class at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements or Swingline Loans of such Class; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any permitted assignee or participant, including any payments made or deemed made in connection with Sections 2.21, 2.22 and 9.02(c). The Borrowers consent to the foregoing and agrees, to the extent they may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower Representative prior to the date on which any payment is due to the Administrative Agent for the account of any of the Lenders, the Swingline Lender or any Issuing Bank hereunder that the Borrowers will not

make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders, the Swingline Lender or the applicable Issuing Bank the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the applicable Lenders, the Swingline Lender or the applicable Issuing Bank severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, the Swingline Lender or such Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.06(b), Section 2.17(c) or Section 2.17(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

(f) Amounts used to Cash collateralize the aggregate undrawn amount of Letters of Credit pursuant to priority *fifth* of clause (b) above shall be applied to satisfy drawings under such Letters of Credit if and as they occur. If any amount remains on deposit as Cash collateral after all Letters of Credit have either been fully drawn or expired, and all LC Disbursement Amounts thereunder have been reimbursed, such remaining amount shall be applied to the other Obligations, if any, in the order set forth in clause (b) above.

Section 2.18. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.14 or such Lender determines it can no longer make or maintain LIBO Rate Loans pursuant to Section 2.19, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall (at the request of the Borrower Representative) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or its participation in any Letter of Credit affected by such event, or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if such designation or assignment in the reasonable judgment of such Lender, (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as applicable, in the future or mitigate the impact of Section 2.19, as the case may be, and (ii) would not subject such Lender to any material unreimbursed out-of-pocket cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.14 or such Lender determines it can no longer make or maintain LIBO Rate Loans pursuant to Section 2.19, (ii) the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, (iii) any Lender is a Defaulting Lender or (iv) in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby" with respect to which Required Lender consent has been obtained, any Lender is a non-consenting Lender (each such Lender, a "**Non-Consenting Lender**"), then the Borrower Representative may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (x) terminate the applicable Commitments and/or Additional Commitments of

such Lender and the Borrowers shall repay all Obligations of the Borrowers owing to such Lender relating to the applicable Loans and participations held by such Lender as of such termination date or (y) replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.05), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment); provided that (w) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and, if applicable, participations in LC Disbursements and Swingline Loans, in each case of such Class of Loans, Commitments and/or Additional Commitments, accrued interest thereon, accrued fees and all other amounts payable to it hereunder with respect to such Class of Loans, Commitments and/or Additional Commitments, (x) in the case of any assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments, (y) such assignment does not conflict with applicable law and (z) with respect to any Lender that is a Non-Consenting Lender pursuant to clause (iv) above, such replacement Lender shall consent to such waiver, amendment or consent. A Lender (other than a Defaulting Lender) shall not be required to make any such assignment and delegation, and the Borrowers may not repay the Obligations of such Lender or terminate its Commitments or Additional Commitments, if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each Lender agrees that if it is replaced pursuant to this Section 2.18, it shall execute and deliver to the Administrative Agent an Assignment and Assumption to evidence such sale and purchase and shall deliver to the Administrative Agent any Promissory Note (if the assigning Lender's Loans are evidenced by Promissory Notes) subject to such Assignment and Assumption; provided that the failure of any Lender replaced pursuant to this Section 2.18 to execute an Assignment and Assumption or deliver such Promissory Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Promissory Notes shall be deemed cancelled upon such failure. Each Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Lender's attorney-in-fact, with full authority in the place and stead of such Lender and in the name of such Lender, from time to time in the Administrative Agent's discretion, with prior written notice to such Lender, to take any action and to execute any such Assignment and Assumption or other instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this clause (b). To the extent a Lender is replaced pursuant to Section 2.18(b)(iv) in connection with a Repricing Transaction requiring payment of a fee pursuant to Section 2.11(e), the Borrowers shall pay to each Lender being replaced the fee set forth in Section 2.11(e).

Section 2.19. Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for such Lender or its applicable lending office to make or maintain any LIBO Rate Loans, then, on notice thereof by such Lender to the Borrower Representative through the Administrative Agent, any obligations of such Lender to make or continue LIBO Rate Loans or to convert ABR Borrowings to LIBO Rate Borrowings shall be suspended until such Lender notifies the Administrative Agent and the Borrower Representative that the circumstances giving rise to such determination no longer exist (which notice such Lender agrees to give promptly). Upon receipt of such notice, the Borrowers shall upon demand from such Lender (with a copy to the Administrative Agent), either convert all LIBO Rate Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted. Each

Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the determination of such Lender, otherwise be materially disadvantageous to such Lender.

Section 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender, to the extent permitted by applicable law:

(a) Fees shall cease to accrue on the unfunded portion of the Revolving Credit Commitment of such Defaulting Lender pursuant to Section 2.11(a) and, subject to clause (d)(iv) below, on the participation of such Defaulting Lender in Letters of Credit pursuant to Section 2.11(b).

(b) The Commitments and the LC Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender disproportionately and adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(c) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of a Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.10, Section 2.14, Section 2.15, Section 2.16, Section 2.17, Article 7, Section 9.06 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.09), shall be applied at such time or times as may be determined by the Administrative Agent and, where relevant, the Borrower Representative as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a *pro rata* basis of any amounts owing by that Defaulting Lender to any applicable Issuing Banks and Swingline Lenders hereunder; third, if so determined by the Administrative Agent or requested by the applicable Issuing Bank or Swingline Lender, to be held as Cash collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit or Swingline Loans; fourth, as the Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement; fifth, if so determined by the Administrative Agent or the Borrower Representative, to be held in a deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the non-Defaulting Lenders, the Issuing Banks or Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender, any Issuing Bank or any Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Exposure in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or LC Exposure were made or created at a time when the conditions set forth in Section 4.01 or Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Exposure owed to, all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or LC Exposure owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a

Defaulting Lender or to post Cash collateral pursuant to this Section 2.20(c) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(d) If any Swingline Loans or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Swingline Loans and LC Exposure shall be reallocated among the non-Defaulting Revolving Lenders in accordance with their respective Applicable Percentages but only to the extent the sum of all non-Defaulting Lenders' Revolving Credit Exposures does not exceed the total of all non-Defaulting Revolving Lenders' Revolving Credit Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any other right or remedy available to it hereunder or under law, within two Business Days following notice by the Administrative Agent, Cash collateralize 100% of such Defaulting Lender's LC Exposure and any obligations of such Defaulting Lender to fund participations in any Swingline Loan (after giving effect to any partial reallocation pursuant to paragraph (i) above and any Cash collateral provided by the Defaulting Lender or pursuant to Section 2.20(c) above) or make other arrangements reasonably satisfactory to the Administrative Agent and to the applicable Issuing Bank and/or Swingline Lender with respect to such LC Exposure and obligations to fund participations. Cash collateral (or the appropriate portion thereof) provided to reduce LC Exposure or other obligations shall be released promptly following (A) the elimination of the applicable LC Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 2.18)) or (B) the Administrative Agent's good faith determination that there exists excess Cash collateral (including any subsequent reallocation of Swingline Loans and LC Exposure among non-Defaulting Lenders described in clause (i) above);

(iii) if the LC Exposure of the non-Defaulting Lenders are reallocated pursuant to this Section 2.20(d), then the fees payable to the Revolving Lenders pursuant to Sections 2.11(a) and (b), as the case may be, shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(iv) if any Defaulting Lender's LC Exposure is not Cash collateralized, prepaid or reallocated pursuant to this Section 2.20(d), then, without prejudice to any rights or remedies of the applicable Issuing Bank or any Revolving Lender hereunder, all letter of credit fees payable under Section 2.11(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the applicable Issuing Bank until such Defaulting Lender's LC Exposure is Cash collateralized.

(e) So long as any Revolving Lender is Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and no Issuing Bank shall be required to issue, extend, create, incur, amend or increase any Letter of Credit unless it is reasonably satisfied that the related exposure will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders, Cash collateral provided pursuant to Section 2.20(c) and/or Cash collateral will be provided by the Borrowers in accordance with Section 2.20(d), and participating interests in any such newly issued, extended or created Letter of Credit or newly made Swingline Loan shall be allocated among non-

Defaulting Revolving Lenders in a manner consistent with Section 2.20(d)(i) (and Defaulting Lenders shall not participate therein).

(f) In the event that the Administrative Agent and the Borrower Representative agree that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Applicable Percentage of Swingline Loans and LC Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Revolving Lender shall purchase at par such of the Revolving Loans of the other Revolving Lenders (other than Swingline Loans) or participations in Revolving Loans as the Administrative Agent shall determine may be necessary in order for such Revolving Lender to hold such Revolving Loans or participations in accordance with its Applicable Percentage; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Revolving Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties and subject to Section 9.20, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.21. Incremental Credit Extensions.

(a) The Borrower Representative may, at any time, on one or more occasions deliver a written request to Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders) to (i) add one or more new tranches of term facilities and/or increase the principal amount of any Class of the Term Loans by requesting new term loan commitments to be added to such Loans (any such new tranche or increase, an "**Incremental Term Facility**" and any loans made pursuant to an Incremental Term Facility, "**Incremental Term Loans**") and/or (ii) increase the Total Revolving Credit Commitment (each such increase, an "**Incremental Revolving Commitment Increase**" and, together with any Incremental Term Facility, "**Incremental Facilities**"; and the loans thereunder, "**Incremental Revolving Loans**" and, together with any Incremental Term Loans, "**Incremental Loans**") in an aggregate principal amount not to exceed (x) from and after the Third Amendment Effective Date, $75,000,000 *less* the aggregate principal amount of all Incremental Equivalent Debt, plus (y) an unlimited amount so long as, in the case of this clause (y), after giving effect to such Incremental Facility, the Total Leverage Ratio calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 (but excluding the Cash proceeds to the Borrowers of such Incremental Loans or any Incremental Equivalent Debt) would not exceed 3.50 to 1.00 (it being understood that for purposes of clause (y) of this Section 2.21(a), (A) any Incremental Loans and any Incremental Equivalent Debt (including any Replacement Term Loans, any loans under any Replacement Revolving Facility or any other Refinancing Indebtedness in respect thereof) shall be deemed to be Consolidated Secured Debt, whether or not satisfying the requirements thereof and (B) any Incremental Revolving Commitment Increase shall be deemed to be fully drawn) (the amounts described in clauses (x) and (y) above, the "**Incremental Cap**"), specifying the amount requested and the Borrower or Borrowers for such Incremental Facility; provided that:

(i) such request shall be for an Incremental Commitment of not less than $5,000,000,

(ii) except as otherwise specifically agreed by any Lender prior to the date hereof, or separately agreed from time to time between the Borrower Representative and any Lender, no Lender shall be obligated to provide any Incremental Commitment and the

determination to provide such commitments shall be within the sole and absolute discretion of such Lender,

(iii) the creation or provision of any Incremental Facility or Incremental Loan shall not require the approval of any existing Lender other than any existing Lender providing all or part of any Incremental Commitment,

(iv) each Incremental Revolving Commitment Increase will be subject to the same terms and conditions as those applicable to the Revolving Facility (and be deemed added to and made a part of the Revolving Facility),

(v) any Incremental Term Facility that constitutes an increase to an existing Class of Term Loans shall have the same interest rate as the applicable Class of Term Loans, and otherwise the interest rate applicable to any Incremental Term Facility or Incremental Term Loans will be determined by the Borrower Representative and the lenders providing such Incremental Term Facility or Incremental Term Loans; provided that such interest rate will not be more than 0.50% higher than the lowest corresponding interest rate applicable to the then-existing Term Loans, unless the interest rate margin with respect to such existing Term Loans is adjusted to be equal to the interest rate with respect to the relevant Incremental Term Loans or Incremental Term Facility, *minus*, 0.50%; provided, further, that in determining the applicable interest rate: (w) OID or upfront fees paid by the Borrowers in connection with the Term Loans or such Incremental Term Facility or Incremental Term Loans (based on a four-year average life to maturity or lesser remaining life to maturity), shall be included, (x) any amendments to the Applicable Rate that became effective subsequent to the Closing Date but prior to the time of the addition of such Incremental Term Facility or Incremental Term Loans shall be included, (y) arrangement, commitment, structuring and underwriting fees and any amendment fees paid or payable to the Arrangers (or their Affiliates) in their respective capacities as such in connection with the Term Loans or to one or more arrangers (or their affiliates) in their capacities as such applicable to such Incremental Term Facility or Incremental Term Loans shall be excluded and (z) if such Incremental Term Facility or Incremental Term Loans include any interest rate floor greater than that applicable to the Term Loans, and such floor is applicable to the Term Loans on the date of determination, such excess amount shall be equated to interest margin for determining the increase,

(vi) any Incremental Term Facility that constitutes an increase to an existing Class of Term Loans shall have the same final maturity date as the applicable Class of Term Loans, and otherwise the final maturity date with respect to any Incremental Term Loans shall be no earlier than the Latest Term Loan Maturity Date then in effect,

(vii) any Incremental Term Facility that constitutes an increase to an existing Class of Term Loans shall have the same Weighted Average Life to Maturity as the applicable Class of Term Loans, and otherwise the Weighted Average Life to Maturity of any Incremental Term Facility shall be no shorter than the shortest remaining Weighted Average Life to Maturity of any Class of the then-existing Term Loans,

(viii) any Incremental Facility shall have the same guarantees as and be *pari passu* with respect to security with the existing Loans and no Incremental Facility shall be guaranteed by any Person that is not a Loan Guarantor or secured by any assets other than Collateral,

(ix) any prepayment (other than scheduled amortization payments) of Incremental Term Loans shall be made on a *pro rata* basis with all then existing Term Loans (and all other then-existing Additional Term Loans requiring ratable prepayment), except that the Borrowers and the lenders in respect of such Incremental Term Loans shall be permitted, in their sole discretion, to elect to prepay or receive, as applicable, any prepayments on a less than *pro rata* basis (but not on a greater than *pro rata* basis),

(x) (i) except as otherwise agreed by the lenders providing such Incremental Commitments to finance a Permitted Acquisition, no Default or Event of Default shall exist immediately prior to or after giving effect to the effectiveness of any Incremental Facility; provided that (1) in the case of any Incremental Commitment incurred to finance a Permitted Acquisition, no Default or Event of Default shall exist at the time the agreement governing such Permitted Acquisition becomes effective and (2) no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) exists immediately prior to or after giving effect to the effectiveness of any Incremental Facility, and (ii) the representations and warranties set forth in the Loan Documents shall be true and correct in all material respects (or, if qualified by "materiality", "Material Adverse Effect" or similar term or qualification, in all respects), except that, in the case of an Incremental Facility incurred to finance a Permitted Acquisition, the requirements in this clause (ii) shall be subject to customary "Limited Conditionality Provisions" if otherwise agreed by the lenders providing such Incremental Facility,

(xi) except as otherwise required or permitted in clauses (i) through (x) above, all other terms of any Incremental Term Facilities, if not consistent with the terms of the applicable Class of Term Loans, shall be as agreed by the Borrower Representative, the Administrative Agent (it being understood that any terms which are not substantially identical to the applicable Class of Term Loans and applicable only after the then existing Latest Term Loan Maturity Date are deemed reasonably acceptable to the Administrative Agent) and the lenders providing such Incremental Term Facilities,

(xii) the proceeds of any Incremental Facility may be used by the Borrowers and their Subsidiaries for working capital and other general corporate purposes and any other use not prohibited by this Agreement, and

(xiii) on the date of the making of such new Incremental Term Loans that will be added to any Class of Term Loans or Additional Term Loans, and notwithstanding anything to the contrary set forth in Sections 2.07 and 2.12, such new Incremental Term Loans shall be added to (and constitute a part of) each borrowing of outstanding Term Loans or Additional Term Loans, as applicable, of the same type with the same Interest Period of the respective Class on a pro rata basis (based on the relative sizes of the various outstanding Borrowings), so that each Term Lender will participate proportionately in each then outstanding borrowing of Term Loans or Additional Term Loans, as applicable, of the same type with the same Interest Period of the respective Class.

(b) Incremental Commitments may be provided by any existing Lender, or by any other lender (any such other lender being called an "**Additional Lender**"); provided that the Administrative Agent (and the Swingline Lender and Issuing Bank, in the case of an Incremental Revolving Commitment Increase) shall have consented (such consent not to be unreasonably withheld) to such Additional Lender's providing such Incremental Commitments if such consent would be required under Section 9.05(b) for an assignment of Loans to such Additional Lender; provided, further, that any

such Additional Lender in respect of any Incremental Term Facility that is an Affiliated Lender shall be subject to the provisions of Section 9.05(g), *mutatis mutandis*, to the same extent as if such Incremental Commitments and related Obligations had been obtained by such Lender by way of assignment.

(c) Each Lender or Additional Lender providing a portion of the Incremental Commitments shall execute and deliver to the Administrative Agent and the Borrower Representative all such documentation (including an amendment to this Agreement or any other Loan Document) as may be reasonably required by the Administrative Agent to evidence and effectuate such Incremental Commitments. On the effective date of such Incremental Commitments, each Additional Lender added as a new Lender pursuant to such Incremental Commitments shall become a Lender for all purposes in connection with this Agreement.

(d) As a condition precedent to such Incremental Facility or Incremental Loans, (i) upon its request, the Administrative Agent shall have received customary written opinions of counsel to the Borrowers in form and substance reasonably satisfactory to the Administrative Agent, as well as such reaffirmation agreements, supplements and/or amendments to the Loan Documents as it shall reasonably require, (ii) the Administrative Agent shall have received an administrative questionnaire, in the form provided to such Additional Lender by the Administrative Agent (the "**Administrative Questionnaire**") and such other documents as it shall reasonably require for an Additional Lender, and the Administrative Agent and Lenders shall have received all fees required to be paid in respect of such Incremental Facility or Incremental Loans and (iii) the Administrative Agent shall have received a certificate of the Borrower Representative signed by a Responsible Officer of the Borrower Representative:

(i) certifying and attaching a copy of the resolutions adopted by the Borrowers approving or consenting to such Incremental Facility or Incremental Loans, and

(ii) to the extent applicable, certifying that the conditions set forth in clause (a)(x) above, and any applicable financial test pursuant to clause (y) of Section 2.21(a) relating to the incurrence of such Incremental Facility or Incremental Loans, have been satisfied.

(e) In connection with any Incremental Revolving Commitment Increase pursuant to this Section 2.21, (i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Revolving Lender providing a portion of such Incremental Revolving Commitment Increase (each a "**Commitment Increase Lender**") in respect of such increase, and each such Commitment Increase Lender will automatically and without further act be deemed to have assumed a portion of such Revolving Lender's participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans held by each Revolving Lender (including each such Commitment Increase Lender) will equal the percentage of the Total Revolving Credit Commitment of all Revolving Lenders represented by such Revolving Lender's Incremental Revolving Commitment and (ii) if, on the date of such increase, there are any Revolving Loans outstanding, such Revolving Loans shall on or prior to the effectiveness of such Incremental Revolving Commitment Increase be prepaid from the proceeds of additional Incremental Revolving Loans made hereunder (reflecting such Incremental Revolving Commitment Increase), which prepayment shall be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any Revolving Lender in accordance with Section 2.15. The Administrative Agent and the Revolving Lenders hereby agree that the minimum borrowing, *pro rata* borrowing and *pro rata* payment

requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence; provided, however, that, after giving effect to any Incremental Revolving Commitment Increase and the transactions effected pursuant to the immediately preceding sentence, (1) the borrowing and repayment (except for (A) repayments required upon the maturity date of any previously existing Revolving Credit Commitments and (B) repayments made in connection with a permanent repayment and termination of commitments (subject to clause (3) below)) of Loans with respect to any Incremental Revolving Commitment Increase shall be made on a pro rata basis with all other Revolving Credit Commitments, (2) all Swingline Loans and Letters of Credit shall be participated on a pro rata basis by all Lenders with Commitments in accordance with their percentage of the Revolving Credit Commitments and (3) the permanent repayment of Revolving Loans with respect to, and termination of, commitments under any Incremental Revolving Commitment Increase shall be made on a pro rata basis with all other Revolving Credit Commitments, except that the Borrowers shall be permitted, in their sole discretion, to permanently repay and terminate commitments of any class of Revolving Credit Commitments on better than a pro rata basis as compared to any other class with a later maturity date than such class.

(f) The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrowers as may be necessary in order to establish new tranches or sub-tranches in respect of Loans or commitments increased or extended (as applicable) pursuant to this Section 2.21 and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower Representative in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.21.

(g) This Section 2.21 shall supersede any provisions in Section 2.17 or 9.02 to the contrary.

Section 2.22. Extensions of Loans and Revolving Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "**Extension Offer**") made from time to time by the Borrowers to all Lenders holding a Class of Loans with a like maturity date or commitments with a like maturity date, in each case on a *pro rata* basis (based on the aggregate outstanding principal amount of the respective Loans or commitments with a like maturity date) and on the same terms to each such Lender, the Borrowers are hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date of each such Lender's Loans of such Class and/or commitments and otherwise modify the terms of such Loans and/or commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate or fees payable in respect of such Loans and/or commitments (and related outstandings) and/or modifying the amortization schedule in respect of such Lender's Loans) (each, an "**Extension**", and each group of Loans of such Class or commitments, as applicable, in each case as so extended, as well as the original Loans and the original commitments (in each case not so extended), being a "tranche"; any Extended Term Loans shall constitute a separate tranche of Loans from the tranche of Loans from which they were converted and any Extended Revolving Credit Commitments shall constitute a separate tranche of revolving commitments from the tranche of revolving commitments from which they were converted), so long as the following terms are satisfied:

(i) no Default under Section 7.01(a), 7.01(f) or 7.01(g) and no Event of Default shall exist at the time the notice in respect of an Extension Offer is delivered to the

applicable Lenders, and no Default under Section 7.01(a), 7.01(f) or 7.01(g) and no Event of Default shall exist immediately prior to or after giving effect to the effectiveness of any Extension;

(ii) except as to (x) interest rates, fees and final maturity (which shall, subject to immediately succeeding clause (iv)(y), be determined by the Borrower Representative and set forth in the relevant Extension Offer) and (y) any covenants or other provisions applicable only to periods after the Latest Revolving Loan Maturity Date (in each case, as of the date of such Extension), the commitments of any Revolving Lender under the Revolving Facility or any Additional Revolving Facility that agrees to an extension with respect to such commitments extended pursuant to an Extension (an "**Extended Revolving Credit Commitment**"; and the Loans thereunder, "**Extended Revolving Loans**"), and the related outstandings, shall be a revolving commitment (or related outstandings, as the case may be) with the same terms (or terms not less favorable to existing Revolving Lenders) as the original revolving commitments (and related outstandings) provided hereunder; provided that (x) to the extent any non-extended revolving commitments remain, or any other Additional Revolving Facility then exists, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on such revolving facilities (and related outstandings), (B) repayments required upon the maturity date of any such revolving facilities and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (3) below)) of Extended Revolving Loans after the effective date of such Extended Revolving Credit Commitments shall be made on a *pro rata* basis with the Revolving Facility and any Additional Revolving Facilities, (2) all swingline loans and letters of credit under any such Extended Revolving Credit Commitment shall be participated on a *pro rata* basis by all Lenders with commitments under the Revolving Facility and any Additional Revolving Facilities and (3) the permanent repayment of Loans with respect to, and termination of commitments under, any such Extended Revolving Credit Commitment after the effective date of such Extended Revolving Credit Commitments shall be made on a *pro rata* basis with the Revolving Facility and any Additional Revolving Facilities, except that the Borrowers shall be permitted to permanently repay and terminate commitments of any such revolving facility on a greater than *pro rata* basis as compared to any other revolving facilities with a later maturity date than such revolving facility and (y) at no time shall there be more than three separate Classes of revolving commitments hereunder (including Revolving Credit Commitments, Extended Revolving Credit Commitments and Replacement Revolving Facilities);

(iii) except as to (x) interest rates, fees, amortization, final maturity date, premiums, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iv), (v) and (vi), be determined by the Borrower Representative and set forth in the relevant Extension Offer) and (y) any covenants or other provisions applicable only to periods after the Latest Term Loan Maturity Date (in each case, as of the date of such Extension), the Term Loans of any Lender extended pursuant to any Extension (any such extended Term Loans, the "**Extended Term Loans**") shall have the same terms as the tranche of Term Loans subject to such Extension Offer; provided, however, that with respect to representations and warranties, affirmative and negative covenants (including financial covenants) and events of default to be applicable to any such tranche of Extended Term Loans, such provisions may be more favorable to the lenders of the applicable tranche of Extended Term Loans than those originally applicable to the tranche of Term Loans subject to the Extension Offer, so long as (and only so long as) such provisions also expressly apply to (and for the benefit

of) the tranche of Term Loans subject to the Extension Offer and each other Class of Term Loans hereunder;

(iv) (x) the final maturity date of any Extended Term Loans shall be no earlier than the then applicable Latest Term Loan Maturity Date at the time of extension and (y) no Extended Revolving Credit Commitments or Extended Revolving Loans shall have a final maturity date earlier than (or require commitment reductions prior to) the then applicable Latest Revolving Loan Maturity Date;

(v) the Weighted Average Life to Maturity of such Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of any Class of Term Loans or any other Extended Term Loans extended thereby;

(vi) any Extended Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments (but, for purposes of clarity, not scheduled amortization payments) in respect of the Term Loans (and any Additional Term Loans then subject to ratable repayment requirements), in each case as specified in the respective Extension Offer;

(vii) if the aggregate principal amount of Loans or commitments, as the case may be, in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Loans or commitments, as the case may be, offered to be extended by the Borrowers pursuant to such Extension Offer, then the Loans or commitments, as the case may be, of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer;

(viii) the Extensions shall be in a minimum amount of $10,000,000;

(ix) any applicable Minimum Extension Condition shall be satisfied or waived by the Borrower Representative; and

(x) all documentation in respect of such Extension shall be consistent with the foregoing.

(b) With respect to all Extensions consummated by the Borrowers pursuant to this Section 2.22, (i) such Extensions shall not constitute voluntary or mandatory payments for purposes of Section 2.10, (ii) the scheduled amortization payments (in so far as such schedule affects payments due to Lenders participating in the relevant Class) set forth in Section 2.09 shall be adjusted to give effect to the Extension of the relevant Class and (iii) except as set forth in clause (a)(viii) above, no Extension Offer is required to be in any minimum amount or any minimum increment; provided that the Borrower Representative may at its election specify as a condition (a "**Minimum Extension Condition**") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower Representative's sole discretion in consultation with the Administrative Agent and which may be waived by the Borrower Representative) of Loans or commitments (as applicable) of any or all applicable tranches be tendered. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.22 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Credit Commitments on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including

Sections 2.09, 2.10 or 2.17) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section.

(c) No consent of any Lender or the Administrative Agent shall be required to effectuate any Extension, other than the consent of each Lender agreeing to such Extension with respect to one or more of its Loans and/or commitments under any Class (or a portion thereof). All Extended Term Loans provided to the Borrowers and Extended Revolving Credit Commitments provided to the Borrowers and all obligations in respect thereof shall be Secured Obligations under this Agreement and the other Loan Documents that are secured by the Collateral and guaranteed on a *pari passu* basis with all other applicable Secured Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrowers as may be necessary in order to establish new tranches or sub-tranches in respect of Loans or commitments so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower Representative in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.22.

(d) In connection with any Extension, the Borrower Representative shall provide the Administrative Agent at least ten Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.22.

Section 2.23. Borrower Representative. Holdings hereby (i) is designated and appointed by each Borrower as its representative and agent on its behalf (the "**Borrower Representative**") and (ii) accepts such appointment as the Borrower Representative, in each case, for the purposes of issuing notices of Borrowings, notices to convert and continue Borrowings, requests for Letters of Credit and Swingline Loans, delivering certificates and instructions on behalf of the Borrowers, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants, but without relieving any Borrower of its joint and several obligations to pay and perform the Obligations) on behalf of any Borrower or the Borrowers under the Loan Documents. Administrative Agent and each Lender may regard any notice or other communication pursuant to any Loan Document from the Borrower Representative as a notice or communication from all Borrowers. Each warranty, covenant, agreement and undertaking made on behalf of a Borrower by the Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

On the ~~Third~~Fourth Amendment Effective Date and on the dates and to the extent required pursuant to Section 4.01 or 4.02 hereof, as applicable, each of the Loan Parties represents and warrants to the Lenders on behalf of themselves and their respective Subsidiaries, as applicable that:

Section 3.01. Organization; Powers. Each of the Loan Parties and each of its Subsidiaries (a) is duly organized and validly existing and in good standing, "active" or "intact" (to the extent each such concept exists in such jurisdiction) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted

and (c) is qualified to do business in, and is in good standing in, every jurisdiction where its ownership, lease or operation of properties or conduct of its business requires such qualification; except, in each case referred to in this Section 3.01 (other than clause (a) with respect to the Borrowers and clause (b) with respect to the Loan Parties) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02. Authorization; Enforceability. The execution, delivery and performance of each of the Loan Documents are within each applicable Loan Party's corporate or other organizational power and have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligations of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

Section 3.03. Governmental Approvals; No Conflicts. The execution and delivery of the Loan Documents by each Loan Party party thereto and the performance by such Loan Party thereof (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) for the Perfection Requirements and (iii) such consents, approvals, registrations, filings, or other actions which the failure to obtain or make could not be reasonably expected to have a Material Adverse Effect, (b) will not violate any (i) of such Loan Party's Organizational Documents or (ii) any Requirements of Law applicable to such Loan Party which, in the case of this clause (b)(ii) could reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under (i) the Subordinated Notes or (ii) any other Contractual Obligation of any of the Loan Parties which in the case of this clause (c)(ii) could reasonably be expected to result in a Material Adverse Effect.

Section 3.04. Financial Condition; No Material Adverse Effect.

(a) The Borrower Representative has heretofore furnished to the Lenders the Historical Financial Statements, in each case, presenting fairly in all material respects the consolidated financial position of Osmotica Cyprus and its subsidiaries and of Vertical/Trigen and its subsidiaries at the date of said Historical Financial Statements and the results for the respective periods covered thereby. All such financial statements have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes to said financial statements and subject, in the case of the unaudited financial statements, to audit and normal year-end adjustments and the absence of footnotes.

(b) The pro forma combined consolidated balance sheet of the Holdings and its Subsidiaries delivered pursuant to Section 4.01(c) presents a good faith estimate of the pro forma consolidated financial position of Holdings and its Subsidiaries as of such date.

(c) The financial statements most recently provided pursuant to Section 5.01(a) or (b), as applicable, present fairly, in all material respects, the financial position and results of operations and Cash flows of Holdings and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to, in the case of the unaudited financial statements, the absence of footnotes and audit and normal year-end adjustments.

(d) After giving effect to the Transactions, since December 31, 2014, there have been no events, changes, developments or effects that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.05. Properties.

(a) As of the Third Amendment Effective Date, Schedule 3.05(a) sets forth the address of each Material Real Estate Asset (or each set of such assets that collectively comprise one operating property) that is owned or leased by each Loan Party.

(b) Each of the Loan Parties and each of their Subsidiaries has good and valid fee simple title to or rights to purchase, or valid leasehold interests in, or easements or other limited property interests in, all its Real Estate Assets (including any Mortgaged Properties) and has good and marketable title to its personal property and assets, in each case, except (i) for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes or (ii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(c) Each of the Loan Parties and each of their Subsidiaries own or otherwise have a license or right to use all rights in patents, trademarks, service marks, trade names, domain names, copyrights and other rights in works of authorship (including all copyrights embodied in software) and all other similar intellectual property rights ("**IP Rights**") used in the conduct of the businesses of the Loan Parties and their Subsidiaries as presently conducted without any infringement or misappropriation of the IP Rights of third parties, except to the extent such failure to own or license or have rights to use would not, or where such infringement or misappropriation would not, have, individually or in the aggregate, a Material Adverse Effect. No third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any of the IP Rights of any Loan Party or any of their Subsidiaries, except to the extent such infringement or misappropriation would not have, individually or in the aggregate, a Material Adverse Effect. No claim or litigation regarding any of the IP Rights is pending or, to the knowledge of any Loan Party, threatened in writing, except to the extent such claim or litigation would not have, individually or in the aggregate, a Material Adverse Effect. A correct and complete list of all IP Rights registered with the United States Patent and Trademark Office or the United States Copyright Office or any relevant office or agency in any applicable foreign jurisdiction, as applicable, and domain names registered with third-party domain name registrars, owned by the Loan Parties and their Subsidiaries as of the Third Amendment Effective Date is set forth on Schedule 3.05(c).

Section 3.06. Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing against or affecting the Loan Parties or any of their Subsidiaries which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) no Loan Party nor any of its Subsidiaries has received notice of any claim with respect to any Environmental Liability or is aware of any facts or circumstances that could reasonably be expected to give rise to an Environmental Liability and (ii) no Loan Party nor any of its Subsidiaries has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law.

(c) Neither any Loan Party nor any of its Subsidiaries has treated, stored, transported or disposed of Hazardous Materials at or from any currently or formerly operated real estate or facility relating to its business in a manner that would reasonably be expected to have a Material Adverse Effect.

Section 3.07. Compliance with Laws. Each of the Loan Parties and their Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. All rights and franchises, licenses and permits material to the business of the Loan Parties or any of their Subsidiaries are in full force and effect, except to the extent of any failure that has not had, and could not reasonably be expected to result in, a Material Adverse Effect.

Section 3.08. Investment Company Status. No Loan Party is an "investment company" as defined in, or is required to be registered under, the Investment Company Act of 1940.

Section 3.09. Taxes. Each of the Loan Parties and their Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to file such Tax returns and reports or pay such Taxes, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.10. ERISA. No ERISA Event has occurred in the five-year period prior to the date on which this representation is made or deemed made and is continuing that, when taken together with all other such ERISA Events, would reasonably be expected to result in a Material Adverse Effect.

Section 3.11. Disclosure.

(a) As of the ~~Third~~Fourth Amendment Effective Date, all written information (other than the Projections, other forward-looking information and information of a general economic or industry-specific nature) that has been made available concerning the Loan Parties and their Subsidiaries, the Transactions and included in the Information Memorandum or otherwise prepared by or on behalf of the foregoing or their respective representatives and made available to any Lender or the Administrative Agent on or before the ~~Third~~Fourth Amendment Effective Date (the "**Information**"), when taken as a whole, did not, when furnished, contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto from time to time).

(b) The Projections have been prepared in good faith based upon assumptions believed by Holdings and the Borrowers to be reasonable at the time furnished (it being recognized that such Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond Holdings' and the Borrowers' control, that no assurance can be given that any particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

(c) To the knowledge of the Borrowers, the information included in the Beneficial Ownership Certification provided to the Administrative Agent to any Lender in connection with this Agreement is true and correct in all respects.

Section 3.12. Solvency.

As of the Third Amendment Effective Date and after giving effect to the incurrence of the Indebtedness and obligations being incurred in connection with this Agreement and the Third Amendment on the Third Amendment Effective Date and the use of proceeds thereof, (i) the sum of the debt (including contingent liabilities) of Holdings and its Subsidiaries, taken as a whole, does not exceed the fair value of the present assets of the Holdings and its Subsidiaries, taken as a whole; (ii) the fair saleable value of the property of Holdings and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business; (iii) the capital of the Holdings and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Holdings and its Subsidiaries, taken as a whole, contemplated as of the date hereof; and (iv) the Holdings and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Section 3.13. Subsidiaries. Schedule 3.13 sets forth, in each case as of the Third Amendment Effective Date, (a) a correct and complete list of the name of each subsidiary of Holdings and the ownership interest therein held by Holdings, the Borrowers, or their applicable subsidiaries, (b) the type of entity of Holdings and each of its subsidiaries and (c) the percentage ownership (direct and indirect) of Holdings in each class of capital stock or other Capital Stock of each of its subsidiaries. As of the Third Amendment Effective Date, all outstanding shares of Capital Stock of each Subsidiary of each Loan Party have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights. As of the Third Amendment Effective Date, no subsidiary of any Loan Party has outstanding any securities convertible into or exchangeable for its Capital Stock or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of its Capital Stock.

Section 3.14. Security Interest in Collateral. Subject to the terms of the last paragraph of Section 4.01, the Legal Reservations and the Perfection Requirements, the provisions of this Agreement and the other Loan Documents create legal, valid and enforceable Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of itself and the other Secured Parties, and subject to the Perfection Requirements, such Liens constitute perfected Liens (with the priority each Lien is expressed to have within the Collateral Document) on the Collateral (to the extent such security interest is required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein.

Section 3.15. Labor Disputes. As of the Third Amendment Effective Date, except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes, lockouts, slowdowns or other collective labor disputes against the Loan Parties or any of the Subsidiaries pending or, to the knowledge of the Loan Parties or any of the Subsidiaries, threatened, (b) the hours worked by and payments made to employees of the Loan Parties and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters and (c) all payments due from the Loan Parties or any of the 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 Loan Parties or their Subsidiaries to the extent required by GAAP. The consummation of the Transactions will not give rise to any right of termination

or right of renegotiation on the part of any union under any collective bargaining agreement to which any of the Loan Parties or any of their Subsidiaries is bound.

Section 3.16. Federal Reserve Regulations.

(a) On the ~~Third~~Fourth Amendment Effective Date, none of the Collateral is Margin Stock. Not more than 25% of the value of the assets of any of the Loan Parties or their Subsidiaries taken as a whole is represented by Margin Stock.

(b) None of the Loan Parties nor any of their respective Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock. No part of any Loan or any Credit Extension (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to the extend credit for the purpose of purchasing or carrying any Margin Stock.

(c) Neither the making of any Loan nor the occurrence of any Credit Extension nor the use of any part of the proceeds thereof, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or is inconsistent with, the provisions of Regulation T, U or X.

Section 3.17. Anti-Terrorism Laws.

(a) None of the Loan Parties nor any of their respective subsidiaries nor, to the knowledge of any Loan Party, any director, officer, agent, employee or Controlling Affiliate of any of the foregoing is (i) a person on the list of "Specially Designated Nationals and Blocked Persons" or (ii) currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"); and the Borrowers will not directly or indirectly use the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC, except to the extent licensed or otherwise approved by OFAC.

(b) To the extent applicable, each Loan Party and each of their Subsidiaries is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the USA PATRIOT Act.

(c) No part of the proceeds of any Loan or any Letter of Credit will be used, directly or, to the knowledge of the Borrowers, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 3.18. Holding Company Status. None of Holdings or Osmotica Cyprus has engaged in any business activities or owns any material assets other than as permitted in Section 6.15(c).

Section 3.19. Material Contracts. No Loan Party or any of its Subsidiaries is in material breach of, or in material default under, any Material Contract and all Material Contracts are in full force and effect.

Section 3.20. Healthcare Regulatory Matters.

(a) The Loan Parties and their Subsidiaries hold or license, and are operating in material compliance with, such material permits, registrations, licenses, franchises, approvals, authorizations and clearances of the U.S. Food and Drug Administration ("**FDA**") required for the conduct of their business as currently conducted (collectively, the "**FDA Permits**"), and such other material Governmental Authorizations required for the conduct of their business as currently conducted. All such material FDA Permits and material Governmental Authorizations are in full force and effect. The Loan Parties and their Subsidiaries have fulfilled and performed, in all material respects, all of their obligations with respect to the material FDA Permits and material Governmental Authorizations, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the holder of any material FDA Permit or material Governmental Authorization.

(b) The Loan Parties and their Subsidiaries hold, and are operating in material compliance with, such material registrations, permits, licenses, approvals, authorizations, certifications, and declarations of conformity, required for the conduct of their business as currently conducted in the EEA (collectively, the "**EEA Permits**"), and all such material EEA Permits are in full force and effect. The Loan Parties and their Subsidiaries have fulfilled and performed in all material respects all of their obligations with respect to the material EEA Permits, and no event has occurred that would reasonably be expected to allow, or after notice or lapse of time that would reasonably be expected to allow, revocation or termination thereof.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Loan Parties and their Subsidiaries, each of their licensed employees and, and to the knowledge of the Loan Parties and their Subsidiaries, each of their contractors, are in compliance with all applicable Healthcare Laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, none of the Loan Parties or their Subsidiaries has received notice of, or is party to, any pending claim, suit, proceeding, hearing, enforcement action, audit, inquiry, inspection, investigation, arbitration or other action from the U.S. Department of Health and Human Services ("**HHS**"), the FDA, the Centers for Medicare and Medicaid Services, the HHS Office of Inspector General, the U.S. Department of Justice, any State Attorneys General or Medicaid Agency, or any other applicable Governmental Authority or applicable foreign regulatory agency or any qui tam plaintiff, alleging that any operation or activity of any Loan Party or any of its Subsidiaries is in material violation of any applicable Healthcare Law.

(d) To the knowledge of the Loan Parties and their Subsidiaries, all applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all requests for a FDA Permit from the FDA or other Governmental Authority relating to the Loan Parties and their Subsidiaries, their business and their products, when submitted to the FDA or other Governmental Authority were true, complete and correct in all material respects as of the date of submission and any necessary or required updates, changes, corrections or modification to such applications, submissions, information and data have been timely submitted to the FDA or other Governmental Authority.

(e) Except as set forth in Schedule 3.20, between December 3, 2013 and the ~~Third~~Fourth Amendment Effective Date, the Loan Parties and their Subsidiaries have not had any product or manufacturing site, and to the knowledge of the Loan Parties and their Subsidiaries, no contract manufacturer of the Loan Parties or any of their Subsidiaries has had any manufacturing site, subject to a

Governmental Authority (including FDA) shutdown or import or export prohibition, nor received any FDA Form 483 or other Governmental Authority notice of inspectional observations, "warning letters," "untitled letters" or requests or requirements to make material changes to any of the Loan Parties' or their Subsidiaries' products, or similar correspondence or notice from the FDA or other Governmental Authority in respect of the Loan Parties' and their Subsidiaries' business and alleging or asserting material noncompliance with any applicable law, permit or such requests or requirements of a Governmental Authority.

(f) Schedule 3.20 sets forth a list of (i) all recalls, field notifications, field corrections, field safety corrective actions, market withdrawals or replacements, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the Loan Parties' and their Subsidiaries' products ("**Safety Notices**") between December 3, 2013 and the ~~Third~~Fourth Amendment Effective Date, and (ii) the status of such Safety Notices, if any.

(g) To the Loan Parties' and their Subsidiaries' knowledge, the clinical, pre-clinical and other studies and tests conducted by or on behalf of or sponsored by the Loan Parties or their Subsidiaries or in which the Loan Parties or their Subsidiaries or their products or product candidates have participated were and, if still pending, are being conducted in all material respect in accordance with standard medical and scientific research procedures and all applicable laws, including, but not limited to, the Federal Food, Drug and Cosmetic Act and its applicable implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58, 312 and 812. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or to the extent disclosed in Schedule 3.20, no investigational new drug application or, as of the ~~Third~~Fourth Amendment Effective Date, no investigational device exemption filed by or on behalf of the Loan Parties or their Subsidiaries with the FDA has been terminated or suspended by the FDA, and neither the FDA or other Governmental Authority nor any applicable foreign regulatory agency has commenced, or, to the knowledge of the Loan Parties or their Subsidiaries, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, delay or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by or on behalf of the Loan Parties or their Subsidiaries.

(h) None of the Loan Parties or their Subsidiaries is the subject of any pending or, to the Loan Parties' or their Subsidiaries' knowledge, threatened investigation in respect of the Loan Parties or their Subsidiaries or their products, by the FDA pursuant to its "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto. Neither the Loan Parties nor their Subsidiaries nor any of their officers, employees or, to the Loan Parties' and their Subsidiaries' knowledge, agents, has been convicted of any crime or engaged in any conduct that could result in a material debarment or exclusion (i) under 21 U.S.C. Section 335a, or (ii) any similar law. As of the date hereof, no claims, actions, proceedings or investigations that would reasonably be expected to result in such a material debarment or exclusion are pending or, to the Loan Parties' and their Subsidiaries' knowledge, threatened in writing against the Loan Parties, their Subsidiaries or any of their officers, employees or agents.

(i) None of the Loan Parties or their Subsidiaries, or their respective equity holders, officers, directors, managing employees, or to the Loan Parties' and their Subsidiaries' knowledge, agents or contractors, has been or is currently excluded from participation in Federal Health Care Programs as defined at 42 U.S.C. § 1320a-7b(f), and none of the Loan Parties or their Subsidiaries is a party to a corporate integrity agreement or has any reporting obligations pursuant to a settlement agreement, plan or correction or other remedial measure entered into with any Governmental Authority.

(j) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Loan Parties and their Subsidiaries are in compliance with the applicable requirements of HIPAA, as amended by HITECH, and their implementing regulations codified at 45 C.F.R. Parts 160 through 164, as amended from time to time ("**HIPAA Regulations**"). The Loan Parties and their Subsidiaries have implemented appropriate security procedures in accordance with the applicable requirements of HIPAA, HITECH and the HIPAA Regulations, including, without limitation, administrative, physical and technical safeguards, to protect the confidentiality, integrity and availability of all electronic protected health information (as defined under the HIPAA Regulations) that they create, receive, maintain or transmit. Further, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each contractual arrangement that is subject to HIPAA, each of the Loan Parties and their Subsidiaries has: (i) to the extent required by Applicable Law, entered into a written Business Associate Agreement (as such term is defined under the HIPAA Regulations) that meets the requirements of HIPAA, HITECH and the HIPAA Regulations; (ii) complied with such Business Associate Agreements; and (iii) at no time experienced or had a use or disclosure of Protected Health Information (as defined in the HIPAA Regulations) in violation of HIPAA, HITECH or the HIPAA Regulations, or a Breach of Unsecured Protected Health Information as such terms are defined at 45 C.F.R. § 164.402. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Loan Parties and their Subsidiaries are in compliance with applicable state health information privacy and security laws and have experienced no privacy violations or security incidents as defined under applicable state laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Loan Parties and their Subsidiaries are in compliance with the EU Data Protection Directive (Directive 95/46/EC), and any EEA Member State laws implementing the provisions of this directive.

Section 3.21. [Reserved].

Section 3.22. Use of Proceeds. The Borrowers shall use, and have used, the proceeds of the Loans and the Letters of Credit issued hereunder only in accordance with Section 5.11 and in compliance with (and not in contravention of) all Requirements of Law and each Loan Document.

Section 3.23. Deposit Accounts. As of the Third Amendment Effective Date, set forth on Schedule 3.23 is a list of each Deposit Account maintained by Holdings or any of its Subsidiaries.

ARTICLE 4 CONDITIONS

Section 4.01. Closing Date. The obligations of the Lenders and the Swingline Lender to make Loans, any Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents; Subordinated Note Documents. (i) The Administrative Agent (or its counsel) shall have received from each of the Loan Parties party thereto a counterpart (or written evidence satisfactory to the Administrative Agent (which may include a facsimile or other electronic transmission) that such party has signed a counterpart) of (A) this Agreement signed by Holdings, the Borrowers, and the other Loan Parties party hereto, (B) the Subordination Agreement signed by the Subordinated Noteholders, the Borrowers and the other Loan Parties party thereto, (C) the Pledge and Security Agreement signed by the Loan Parties, (D) each Non-U.S. Collateral Document (other than Control Agreements, the Hungarian Security Deposit Agreements, the Hungarian Authorization Letters, the Cyprus Debenture, the Cyprus Charge over Bank Accounts, each Cyprus Acknowledgment and the Hungarian Master Reaffirmations) signed by each Loan Party party thereto,

(E) each Promissory Note signed by the Borrowers (to the extent requested at least three Business Days prior to the Closing Date), and (F) each other Loan Document to be executed on the Closing Date signed by the Loan Parties thereto, (ii) the terms and provisions of the Subordinated Note Documents shall be consistent with the terms and provisions set forth in Exhibit D to the Commitment Letter and (iii) the Subordinated Note Documents have been, or substantially concurrently with the execution of the Loan Documents on the Closing Date shall be, duly executed and delivered by the Loan Parties and the other parties thereto, and will be in full force and effect, and the Subordinated Notes have been, or substantially currently with the execution of the Loan Documents on the Closing Date, issued and paid for.

(b) Legal Opinions. The Administrative Agent shall have received, on behalf of itself, the Lenders and each Issuing Bank on the Closing Date, customary written legal opinions (A) dated the Closing Date, (B) addressed to the Administrative Agent, the Lenders, the Swingline Lender and each Issuing Bank and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such matters relating to the Loan Documents as the Administrative Agent shall reasonably request, from each of:

(i) Weil, Gotshal & Manges LLP, special counsel to Holdings, the Borrowers and each other Loan Party, with respect to U.S. law matters;

(ii) Siegler Law Office Weil, Gotshal & Manges, special Hungarian counsel to Hungarian Holdings with respect to Hungarian law matters relating to the capacity of Hungarian Holdings;

(iii) Andrékó Kinstellar Ügyvédi Iroda, special Hungarian counsel to the Administrative Agent, with respect to Hungarian law matters relating to the enforceability of the Hungarian law Collateral Documents to be delivered on the Closing Date; and

(iv) Andreas Neocleous & Co, special Cyprus counsel to the Administrative Agent, with respect to Cyprus law matters.

(c) Financial Statements and Pro Forma Financial Statements. The Administrative Agent shall have received the Required Bank Information.

(d) Closing Certificates; Certified Charters; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each of Holdings, the Borrowers and each Loan Guarantor, dated the Closing Date and executed by a Secretary, Assistant Secretary or other senior officer, (A) which shall certify that attached thereto is a true and complete copy of the resolutions or written consents of its board of directors, stockholders, members or other governing body authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrowers, the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect, (B) which shall identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party on the Closing Date, and (C) which shall certify (x) that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum or other equivalent thereof) of each of Holdings, each Borrower and each Loan Guarantor certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws (or articles of association or deed of foundation or other equivalent thereof) or operating, management or partnership agreement and (y) that such documents or agreements have not been amended since the date of the last amendment thereto shown on the certificate of good standing referred to below (except as

otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date) or as shown by the latest shareholders' resolutions attached thereto amending the same (as the case may be) and (ii) a good standing certificate (or in the case of Hungarian Holdings, a company registry extract), a no-winding-up certificate and/or certificate of tax status (to the extent such concept is known in the relevant jurisdiction) as of a recent date for each of Holdings, each Borrower and each Loan Guarantor from its jurisdiction of organization; and (iii) a Cyprus "Incumbency Certificate" of Osmotica Cyprus signed by its corporate secretary in form and substance satisfactory to the Administrative Agent.

(e) Representations and Warranties. The (i) Specified Acquisition Agreement Representations shall be true and correct as required by the terms of the definition thereof and (ii) the Specified Representations shall be true and correct in all material respects; provided that in the case of any Specified Acquisition Agreement Representation or Specified Representation which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be; provided, further, that if any of the Specified Representations are qualified by or subject to a "material adverse effect", "material adverse change" or similar term or qualification, (x) the definition thereof shall be a Closing Date Material Adverse Effect for purposes of any such representations and warranties made or deemed made on, or as of, the Closing Date and (y) the same shall be true and correct in all respects.

(f) Fees. The Administrative Agent shall have received (A) all fees required to be paid on the Closing Date pursuant to the Fee Letter and (B) all expenses required to be paid on the Closing Date pursuant to the Commitment Letter for which invoices have been presented at least three Business Days prior to the Closing Date, which amounts may be offset against the proceeds of the Loans.

(g) Lien Searches. Subject to the last paragraph of this Section 4.01, the Administrative Agent shall have received the results of recent UCC (or similar), tax and judgment Lien searches with respect to each of the Loan Parties in each applicable jurisdiction.

(h) Refinancing. Prior to or substantially concurrently with the initial funding of the Loans hereunder on the Closing Date, (i) the obligations under that certain Real Estate Loan Agreement, dated as of August 2, 2011, between Bank of America, N.A. and OPC and (ii) the obligations under that certain Credit Agreement dated as of December 13, 2013, between Vertical/Trigen Opco, LLC and BMO Harris Bank, N.A. will be repaid, redeemed, defeased, discharged or terminated (or irrevocable notice for the repayment or redemption thereof will be given to the extent accompanied by any prepayments or deposits required to defease, terminate and satisfy in full any related notes) and security interests and guaranties related thereto terminated and released (collectively, the "**Existing Debt Refinancing**") and the Administrative Agent shall have received evidence reasonably satisfactory to it that the matters set forth in this clause (h) have been satisfied on the Closing Date.

(i) Equity Contribution. Prior to or substantially concurrently with the initial funding of the Loans hereunder, the Equity Contribution shall have been consummated.

(j) Solvency. The Administrative Agent shall have received a certificate in substantially the form of Exhibit I from a Financial Officer of Holdings certifying as to the matters set forth therein.

(k) Borrowing Request; Letter of Credit Request; Closing Date Certificate.

(i) The Borrower Representative shall have delivered to the Administrative Agent, in accordance with Sections 2.03 and 2.05, a Borrowing Request and, if applicable, a

Letter of Credit Request in connection with the extensions of credit to occur on the Closing Date; and

(ii) On the Closing Date, the Administrative Agent shall have received a certificate, dated the Closing Date and signed on behalf of the Borrower Representative by a Responsible Officer, certifying on behalf of the Borrowers that all of the conditions in Sections 4.01(e), (i), (n) and (o) have been satisfied on such date.

(l) Pledged Stock; Stock Powers; Pledged Notes. Subject to the final paragraph of this Section 4.01 the Administrative Agent shall have received (i) the certificates representing the Capital Stock required to be pledged pursuant to the Pledge and Security Agreement, together with an undated stock or similar power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (ii) each promissory note (if any) required to be pledged to the Administrative Agent (or its bailee) pursuant to the Pledge and Security Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(m) Filings, Registrations and Recordings; Insurance; Security Interest. Subject to the last paragraph of this Section 4.01,

(i) any Collateral Document and each document (including any UCC (or equivalent or similar) financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent, to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall be in proper form for filing, registration or recordation;

(ii) the Administrative Agent shall have received an updated extract of the corporate register of mortgages and charges of Osmotica Cyprus, updated to include the recording and insertion of the charges and security created by Osmotica Cyprus further to the Hungarian Quota Pledge, the Pledge and Security Agreement and the Grant of Security Interest in United States Trademarks, dated as of the Closing Date, by and between Osmotica Cyprus and the Administrative Agent, certified as a true and correct copy by the corporate secretary of Osmotica Cyprus; and

(iii) the Administrative Agent shall have received evidence of insurance coverage in compliance with the terms of Section 5.05 hereof (other than with respect to any endorsements referenced therein).

(n) Transactions. Prior to or substantially concurrently with the initial funding of the Loans hereunder, the Acquisition shall have been consummated in all material respects in accordance with the terms of the Acquisition Agreement, but without any amendments, waivers or consents by any party thereto that are materially adverse to the interests of the Arrangers and their respective affiliates that are party hereto as Lenders on the Closing Date in their respective capacities as such without the consent of the Arrangers, such consent not to be unreasonably withheld, delayed or conditioned (it being understood and agreed that (a) any decrease in the purchase price shall be deemed to not be materially adverse to the interests of the Arrangers (or such affiliates) so long as such decrease is allocated to reduce the Equity Contribution, the Term Facility and the Subordinated Notes on a *pro rata*, dollar-for-dollar basis, (b) any increase in the purchase price shall be deemed to not be materially adverse to the Arrangers

(or such affiliates) so long as such increase is funded on a pro rata basis by amounts permitted to be drawn under the Revolving Facility and the Equity Contribution (it being understood that no purchase price or similar adjustment provisions set forth in the Acquisition Agreement shall constitute a decrease or increase in purchase price).

(o) Closing Date Material Adverse Effect. Since December 3, 2015, there has not been, nor is there reasonably expected to be, a Closing Date Material Adverse Effect.

(p) USA PATRIOT Act. No later than three days in advance of the Closing Date, the Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested by any Lender in writing at least 10 days in advance of the Closing Date.

(q) Perfection Certificate. The Administrative Agent shall have received a completed Perfection Certificate dated the Closing Date and signed by a Responsible Officer of the Loan Parties, together with all attachments contemplated thereby.

(r) Leverage. After giving effect to the consummation of the Transactions on the Closing Date, the Total Leverage Ratio and the Secured Leverage Ratio, as set forth in the pro forma consolidated balance sheet of Holdings and its subsidiaries included in the Required Bank Information, do not exceed 4:90:1.00 and 3:75:1.00, respectively (excluding in each case any cash netting and any increase in Indebtedness incurred to fund any OID or upfront fees pursuant to the "Flex Provisions" (as defined in the Fee Letter) or the fee letter for the Subordinated Notes).

Notwithstanding the foregoing, to the extent any Collateral (including the creation or perfection of any security interest) is not or cannot be provided on the Closing Date (other than (i) a Lien on Collateral that may be perfected solely by the filing of a financing statement under the UCC or similar filings under any applicable provisions of the laws of Hungary, (ii) a pledge of the Capital Stock of the Borrowers and the Capital Stock of each Subsidiary of each Loan Party organized under the laws of the United States or Hungary with respect to which a Lien may be perfected on the Closing Date by the delivery of a stock or equivalent certificate and (iii) a lien on IP Rights by way of filing short form intellectual property filings with the United States Patent and Trademark Office or the United States Copyright Office and the filing of the applicable intellectual property filings with the appropriate offices in Hungary) after the Borrowers' use of commercially reasonable efforts to do so without undue burden or expense, then the provision and/or perfection of such Collateral shall not constitute a condition precedent to the availability and initial funding of the Loans on the Closing Date but may instead be delivered and/or perfected in accordance with Section 5.13 hereof.

Section 4.02. Each Credit Extension. After the Closing Date, the obligation of each Revolving Lender to make a Credit Extension is subject to the satisfaction of the following conditions:

(a) (i) In the case of a Borrowing, the Administrative Agent shall have received a Borrowing Request as required by Section 2.03, (ii) in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit as required by Section 2.05(b) or (iii) in the case of a Swingline Borrowing, the Swingline Lender and the Administrative Agent shall have received a request as required by Section 2.04(a).

(b) The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of any such Credit Extension with the same effect as though such representations and warranties had been made on and as of the date of such Credit Extension; provided that to the extent that a representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or period, as the case may be.

(c) At the time of and immediately after giving effect to the applicable Credit Extension, no Event of Default or Default shall have occurred and be continuing.

Each Credit Extension after the Closing Date shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (b) and (c) of this Section.

ARTICLE 5 AFFIRMATIVE COVENANTS

Until the date that all the Revolving Credit Commitments and any Additional Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in Cash and all Letters of Credit have expired without any pending drawing or have been terminated (or have been collateralized or back-stopped by a letter of credit or otherwise, in each case in a manner reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank) and all LC Disbursements shall have been reimbursed (such date, the "**Termination Date**"), each of Holdings (solely with respect to Sections 5.02 and 5.12), each of the Loan Parties hereby covenants and agrees with the Lenders that:

Section 5.01. Financial Statements and Other Reports. The Borrower Representative will deliver to the Administrative Agent for delivery to each Lender:

(a) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of each Fiscal Quarter (or, following the consummation of a Qualifying IPO, each of the first three Fiscal Quarters) of each Fiscal Year (or for each of the first three such Fiscal Quarters ending after the Closing Date, 60 days), the consolidated balance sheet of Holdings and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of Holdings and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto, subject to the absence of footnotes and audit and normal year end adjustments and the effects of acquisition accounting;

(b) Annual Financial Statements. As soon as available, and in any event within 90 days after the end of each Fiscal Year (or for the first Fiscal Year after the Closing Date, 150 days), (i) the consolidated balance sheet of Holdings and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Narrative Report with respect thereto and (ii) with respect to such consolidated financial statements, a report thereon of any independent certified public accountant of recognized national standing (which report shall be unqualified as to "going concern" and scope of audit (except for qualifications pertaining to the impending maturity of indebtedness in respect of any Credit Facility occurring within 12 months of the date of such audit or a

breach or anticipated breach of Section 6.16)), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and cash flows for the periods indicated in conformity with GAAP and that the examination by such accountant in connection with such consolidated financial statements has been made in accordance with GAAP;

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 5.01 may be satisfied with respect to financial information of the Holdings and its Subsidiaries and (in the case of clause (B) below) the Narrative Report by furnishing (A) the applicable financial statements of any Parent Company or (B) Holdings' or any Parent Company's, as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), (i) to the extent such information relates to a parent of Holdings, such information is accompanied by unaudited consolidating information that explains in reasonable detail the differences between the information relating to such parent entity, on the one hand, and the information relating to Holdings and its consolidated Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 5.01(b), such materials are, to the extent applicable, accompanied by a report of any independent certified public accountant of recognized national standing (which report shall be unqualified as to "going concern" and scope of audit (except for qualifications pertaining to the impending maturity of indebtedness in respect of any Credit Facility occurring within 12 months of the date of such audit or a breach or anticipated breach of Section 6.16)), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and cash flows for the periods indicated in conformity with GAAP and that the examination by such accountant in connection with such consolidated financial statements has been made in accordance with GAAP.

(c) Compliance Certificate. Together with each delivery of financial statements pursuant to Sections 5.01(a) and 5.01(b), (i) a duly executed and completed Compliance Certificate (A) certifying that no Default or Event of Default has occurred and is continuing (or if one is, describing in reasonable detail such Default or Event of Default and the steps being taken to cure, remedy or waive the same), (B) in the case of financial statements delivered pursuant to Section 5.01(b), setting forth (x) reasonably detailed calculations of Excess Cash Flow for each Fiscal Year beginning with the financial statements for the Fiscal Year ended on December 31, 2016 and (y) a reasonably detailed calculation of the Net Proceeds in respect of any Prepayment Asset Sale or Net Insurance/Condemnation Proceeds received during the applicable period by or on behalf of, Holdings and its Subsidiaries subject to prepayment pursuant to Section 2.10(b) and the portion of such Net Proceeds that has been invested or are intended to be reinvested in accordance with Section 2.10(b)(ii) and (C) in the case of financial statements delivered pursuant to Sections 5.01(a) and 5.01(b), setting forth reasonably detailed calculations of Consolidated Adjusted EBITDA, Consolidated Net Income, Consolidated Total Assets, Total Leverage Ratio and the Available Amount as of the last day of the Fiscal Quarter or Fiscal Year, as the case may be, covered by such financial statements or stating that there has been no change to such amounts since the date of delivery of the last Compliance Certificate, (ii) (A) a summary of the pro forma adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such financial statements and (B) a list identifying each subsidiary of each Borrower as a Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate or confirming that there is no change in such information since the later of the Closing Date and the date of the last such list and (iii) delivery of customary management discussion and analysis narratives and key business and financial metrics with respect to such financial statements;

(d) Statements of Reconciliation After Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the consolidated financial statements of Holdings and its Subsidiaries for the Fiscal Year ended December 31, 2016 (including any change to IFRS pursuant to Section 1.04(a)), the consolidated financial statements delivered pursuant to Section 5.01(a) or 5.01(b) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such Sections had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation with respect to such financial statements that would have otherwise been delivered, including with respect to the calculations of Consolidated Net Income and Consolidated Adjusted EBITDA;

(e) Notice of Default. Promptly upon any Responsible Officer of any Loan Party obtaining knowledge (i) of any Default or Event of Default or (ii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a reasonably-detailed notice specifying the nature and period of existence of such condition, event or change, or specifying the nature of such Default or Event of Default and what action the Borrowers have taken, are taking and propose to take with respect thereto;

(f) Notice of Litigation. Promptly upon any Responsible Officer of any Loan Party obtaining knowledge of (i) the institution of, or threat of, any Adverse Proceeding not previously disclosed in writing by the Loan Parties to the Administrative Agent, or (ii) any material development in any Adverse Proceeding that, in the case of either clauses (i) or (ii), could reasonably be expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders and their counsel to evaluate such matters;

(g) ERISA. Promptly upon any Responsible Officer of any Loan Party becoming aware of the occurrence of any ERISA Event that could reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof;

(h) Financial Plan. As soon as available and in any event no later than 60 days after the beginning of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2017), a consolidated plan and financial forecast for each Fiscal Quarter of such Fiscal Year (a "**Financial Plan**"), including a forecasted consolidated balance sheet and forecasted consolidated statements of operations and cash flows of the Borrowers and their Subsidiaries for such Fiscal Year, prepared in reasonable detail setting forth, with appropriate discussion, the principal assumptions on which such financial plan is based;

(i) Information Regarding Collateral. (i) The Borrower Representative will furnish to the Administrative Agent prompt written notice of any change (w) in any Loan Party's legal name, (x) in any Loan Party's type of organization, (y) in any Loan Party's jurisdiction of organization or (z) in any Loan Party's organizational identification number, to the extent necessary to perfect or maintain the perfection and priority of the Administrative Agent's security interest in the applicable Collateral and (ii) together with the delivery of each Compliance Certificate provided with the financial statements required to be delivered pursuant to Section 5.01(b) (commencing with the financial statements relating to the Fiscal Year ending on December 31, 2016), the Borrower Representative shall deliver to the Administrative Agent a Perfection Certificate Supplement, either confirming that there has been no change in such information with respect to the Collateral owned by any Loan Party since the date of the

Perfection Certificate delivered on the Closing Date or the date of the most recent certificate or most recent report delivered pursuant to this Section and/or identifying such changes;

(j) Lender Calls. Commencing with the Fiscal Year ending December 31, 2016, at the request of the Administrative Agent, the Borrowers will within 10 Business Days after the date of the delivery (or, if later, required delivery) of the annual financial information pursuant to Section 5.01(b), hold a conference call or teleconference, at a time selected by the Administrative Agent in consultation with the Borrower Representative, with all of the Lenders that choose to participate, to review the financial results of the previous Fiscal Year, and the financial condition of Holdings and its Subsidiaries and the budgets presented for the current Fiscal Year of Holdings and its Subsidiaries; provided that from and after the consummation of a Qualifying IPO, the Borrowers shall not have any obligation pursuant to this clause (j) if the Administrative Agent and Lenders are afforded an opportunity to participate in a customary stockholder earnings call, not less than once per Fiscal Year, that includes a reasonably detailed discussion with senior management of Holdings (or applicable Parent Company) and its Subsidiaries of the financial information furnished with respect to the immediately preceding Fiscal Year pursuant to Sections 5.01(b);

(k) Other Information. (i) Promptly upon their becoming available copies of (A) following an initial public offering, all financial statements, reports, notices and proxy statements sent or made available generally by the Borrowers, Holdings or a Parent Company, as applicable, to their public security holders acting in such capacity or by any Subsidiary of Holdings to its public security holders other than Holdings, the Borrowers or another Subsidiary of Holdings, (B) all regular and periodic reports and all registration statements (other than on Form S-8 or similar form) and prospectuses, if any, filed by a Parent Company, Holdings, the Borrowers or any of their Subsidiaries with any securities exchange or with the SEC or any governmental or private regulatory authority and (C) all press releases and other statements made available generally by a Parent Company, Holdings, the Borrowers or any of their Subsidiaries to the public concerning material developments in the business of such Parent Company, Holdings, the Borrowers or any of their Subsidiaries~~;~~, and (ii) promptly after the reasonable request by the Administrative Agent or any Lender acting through the Administrative Agent, all documentation and other information that the Administrative Agent or such Lender acting through the Administrative Agent reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act and the Beneficial Ownership Regulation;

(l) Evidence of Insurance. Promptly upon any renewal or replacement of any insurance required to be maintained pursuant to Section 5.05, copies of insurance certificates and related endorsements with respect to such insurance as renewed or replaced;~~ and~~

(m) Notice of Change in Beneficial Ownership Certificate. Promptly upon any Responsible Officer of any Loan Party obtaining knowledge of any change in the information provided in any Beneficial Ownership Certification delivered to any Lender that would result in a change to the list of beneficial owners identified in such Beneficial Ownership Certification, written notice thereof and details of such change; and

(n) ~~(m)~~ Such other certificates, reports and information (financial or otherwise) as the Administrative Agent may reasonably request from time to time in connection with the Borrowers' or their Subsidiaries' financial condition or business.

Documents required to be delivered pursuant to this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Representative (x) posts such documents or (y) provides a link thereto on the Borrower Representative's website on the Internet at the website address listed on Schedule 9.01 (which Schedule may be updated from time to time via written notice from the Borrower Representative to the Administrative Agent, the Lenders and each Issuing Bank); provided that, other than with respect to items required to be delivered pursuant to Section 5.01(k) above (and, from and after the consummation of a Qualifying IPO, items required to be delivered pursuant to clauses (a) and (b) of Section 5.01 above, to the extent any such documents are included in materials filed with the SEC), the Borrower Representative shall promptly notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents on the Borrower Representative's website and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents; (ii) on which such documents are delivered by the Borrower Representative to the Administrative Agent for posting on the Borrower Representative's behalf on IntraLinks/SyndTrak or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); (iii) on which executed certificates or other documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); or (iv) in respect of the items required to be delivered pursuant to Section 5.01(k) above (and, from and after the consummation of a Qualifying IPO, items required to be delivered pursuant to clauses (a) and (b) of Section 5.01 above, to the extent any such documents are included in materials filed with the SEC) in respect of information filed by a Parent Company, Holdings, the Borrowers or any of their Subsidiaries with any securities exchange or with the SEC or any governmental or private regulatory authority, such items have been made available on the SEC website; provided that the Borrower Representative shall promptly notify (which may be by facsimile or electronic mail) the Administrative Agent of the filing and availability of any such item and provide to the Administrative Agent by electronic mail a link thereto.

Section 5.02. Existence. Except as otherwise permitted under Section 6.06, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business except to the extent (other than with respect to the preservation of existence of the Borrowers) failure to do so could not reasonably be expected to result in a Material Adverse Effect; provided that no Loan Party or any of its Subsidiaries shall be required to preserve any such existence (other than with respect to preservation of existence of the Borrowers), right or franchise, licenses and permits if such Person or such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders.

Section 5.03. Payment of Taxes. The Loan Parties will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income or businesses within 30 days of the date due; provided that no such Tax need be paid if (a) it is being contested in good faith by appropriate proceedings and adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor, or (b) the failure to pay or discharge the same could not reasonably be expected to result in a Material Adverse Effect.

Section 5.04. Maintenance of Properties. The Loan Parties will, and will cause each of their Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty and condemnation excepted, all property reasonably necessary to the normal conduct of business of the Loan Parties and their respective Subsidiaries and from time to time will make

or cause to be made all needed and appropriate repairs, renewals and replacements thereof except as expressly permitted by this Agreement or where the failure to maintain such properties could not reasonably be expected to have a Material Adverse Effect.

Section 5.05. Insurance. The Loan Parties will maintain or cause to be maintained, with financially sound and reputable insurers, such insurance coverage with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Loan Parties and their respective Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, the Loan Parties and their respective Subsidiaries will maintain or cause to be maintained flood insurance, with respect to each Flood Hazard Property, in compliance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, each as amended from time to time.

Each such policy of insurance shall (i) to the extent applicable, name the Administrative Agent on behalf of the Lenders as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy with respect to the Collateral (excluding any business interruption insurance policy), contain a lender loss payable clause or endorsement to the extent available from such insurance carrier, that names the Administrative Agent, on behalf of the Lenders, as the lender's loss payee thereunder and, in each case, to the extent available, provides for at least 30 days' prior written notice to the Administrative Agent of any modification or cancellation of such policy (or 10 days' prior written notice for any cancellation due to non-payment of premiums).

Section 5.06. Inspections. Each Loan Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by the Administrative Agent to visit and inspect any of the properties of such Loan Party and any of its Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants (provided that such Loan Party may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice, reasonable coordination in and at such reasonable times during normal business hours and as often as may be reasonably requested; provided that (x) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 5.06, and (y) except as provided in the proviso below in connection with the occurrence and continuance of an Event of Default, the Administrative Agent shall not exercise such rights more often than one time during any calendar year; provided, further, that when an Event of Default has occurred and is continuing, the Administrative Agent (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and upon reasonable advance notice; provided that notwithstanding anything to the contrary herein, neither any Loan Party nor any Subsidiary shall be required to disclose, permit the inspection, examination or making of copies or abstracts of, or any discussion of, any document, information, or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable law or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 5.07. Maintenance of Books and Records. The Loan Parties will, and will cause their respective Subsidiaries to, maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP shall be made of all material

financial transactions and matters involving the assets and business of the Borrowers and their Subsidiaries, as the case may be.

Section 5.08. Compliance with Laws. The Loan Parties will comply, and shall cause each of their respective Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws, ERISA, Healthcare Laws, OFAC, USA PATRIOT Act and United States Foreign Corrupt Practices Act of 1977, as amended), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

Section 5.09. Environmental.

(a) Environmental Disclosure. The Borrower Representative will deliver to the Administrative Agent:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of the Loan Parties or any of their respective Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Loan Party's or any Subsidiary's real property or with respect to any Environmental Claims, in each case, that might reasonably be expected to have a Material Adverse Effect;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported by any Loan Party or any of its Subsidiaries to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws that could reasonably be expected to have a Material Adverse Effect, (B) any remedial action taken by any Loan Party or any of its Subsidiaries or any other Persons of which any Loan Party or any of its Subsidiaries has knowledge in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect or (2) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect and (C) any Loan Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that reasonably could be expected to have a Material Adverse Effect;

(iii) as soon as practicable following the sending or receipt thereof by any Loan Party or any of its Subsidiaries, a copy of any and all non-privileged written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (B) any Release required to be reported by any Loan Party or any Subsidiary to any federal, state or local governmental or regulatory agency that reasonably could be expected to have a Material Adverse Effect, and (C) any request made to any Loan Party or any Subsidiary for information from any governmental agency that suggests such agency is investigating whether any Loan Party or any Subsidiary may be potentially responsible for any Hazardous Materials Activity which is reasonably expected to have a Material Adverse Effect;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by any Loan Party or any of its Subsidiaries that could

reasonably be expected to expose any Loan Party or any of its Subsidiaries to, or result in, Environmental Liability that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (B) any proposed action to be taken by such Loan Party or any of its Subsidiaries to modify current operations in a manner that could subject any Loan Party or any of its Subsidiaries to any additional obligations or requirements under any Environmental Law that are reasonably likely to have a Material Adverse Effect; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.09(a).

(b) Hazardous Materials Activities, Etc. Each Loan Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Loan Party or its Subsidiaries that could reasonably be expected to have a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against such Loan Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.10. Designation of Subsidiaries. The board of directors (or equivalent governing body) of any Borrower may at any time designate (or redesignate) any subsidiary (other than any Closing Date Guarantor) as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing (including after giving effect to the reclassification of Investments in, Indebtedness of and Liens on, the applicable Subsidiary or Unrestricted Subsidiary), (ii) immediately before and after such designation, the Borrowers shall be in compliance with Section 6.16 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01(a) or (b) prior to or on the date of the relevant designation, (iii) no subsidiary may be designated as an Unrestricted Subsidiary if (x) it is a "Subsidiary" (or any other term having a similar meaning) for the purpose of any Additional Debt, any Incremental Equivalent Debt or any other Indebtedness in excess of the Threshold Amount or (y) such subsidiary was previously an Unrestricted Subsidiary, (iv) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any Capital Stock in any Borrower or its Subsidiaries or hold any Indebtedness of, or any Lien on any property of any Borrower or its Subsidiaries and (v) no holder of any Indebtedness of any Unrestricted Subsidiary shall have any recourse to any Borrower or its Subsidiaries with respect to such Indebtedness. The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the applicable Borrower therein at the date of designation in an amount equal to the portion of the fair market value of the net assets of such Subsidiary attributable to such Borrower's equity interest therein (and such designation shall only be permitted to the extent such Investment is permitted under Section 6.03). The designation of any Unrestricted Subsidiary as a Subsidiary shall constitute the incurrence or making at the time of designation of any Investments, Indebtedness or Liens of such Subsidiary existing at such time; provided that upon a re-designation of such Unrestricted Subsidiary as a Subsidiary, the applicable Borrower shall be deemed to continue to have an Investment in a Subsidiary in an amount (if positive) equal to (a) such Borrower's "Investment" in such Subsidiary at the time of such re-designation, *less* (b) the portion of the fair market value of the net assets of such Subsidiary attributable to such Borrower's equity therein at the time of such re-designation.

Section 5.11. Use of Proceeds. The Borrowers shall use the proceeds of the Revolving Loans (a) on the Closing Date, (i) in an aggregate principal amount of up to $2,000,000 to finance a portion of

the Transactions (including working capital and/or purchase price adjustments and the payment of Transaction Costs) and for working capital needs and other general corporate purposes and (ii) in an aggregate principal amount of up to $6,000,000 to fund OID or upfront fees payable under the Fee Letter or the fee letter for the Subordinated Notes and (b) after the Closing Date, to finance the working capital needs and other general corporate purposes of Holdings and its Subsidiaries (including for capital expenditures, acquisitions, working capital and/or purchase price adjustments, the payment of transaction fees and expenses (in each case, including in connection with the Acquisition), other Investments, Restricted Payments and any other purpose not prohibited by the terms of the Loan Documents). The Borrowers shall use proceeds of the Closing Date Term Loans solely to finance a portion of the Transactions (including working capital and/or purchase price adjustments payable on the Closing Date and the payment of Transaction Costs). No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would entail a violation of Regulations T, U or X. Letters of Credit may be issued (a) on the Closing Date in the ordinary course of business and to replace or provide credit support for any letters of credit of the Borrowers and their Subsidiaries, and (b) for general corporate purposes of the Borrowers and their Subsidiaries. The Borrowers will use the cash proceeds of the Term Loans made on the Third Amendment Effective Date (a) to make the Third Amendment Debt Repayment on the Third Amendment Effective Date and pay the Transaction Costs (Third Amendment), and (b) for general corporate purposes of the Borrowers and their Subsidiaries. The Borrowers will use the proceeds of the Incremental Term Loans for working capital, capital expenditures and other general corporate purposes of the Borrowers and their Subsidiaries (including for permitted Investments, Permitted Acquisitions and any other purposes not prohibited by the terms of this Agreement).

Section 5.12. Additional Collateral; Further Assurances.

(a) Subject to applicable law, the Borrowers and each other Loan Party shall cause each Domestic Subsidiary (other than any Excluded Subsidiary) formed or acquired after the date of this Agreement to become a Loan Party on or prior to the date that is the later of (i) 30 days following the date of such formation or acquisition and (ii) the earlier of the date of the required delivery of the next Compliance Certificate following such creation or acquisition and the date which is 45 days after the end of the most recently ended Fiscal Quarter (or such later date as may be acceptable to the Administrative Agent in its discretion), by executing a Joinder Agreement in substantially the form attached as Exhibit J hereto (the "**Joinder Agreement**") and a Security Agreement Joinder Agreement. Upon execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will simultaneously therewith deliver a completed Perfection Certificate and simultaneously therewith or as soon as practicable thereafter (and in any event within 45 days thereafter (as may be extended at the discretion of the Administration Agent)) take such actions as may be required in accordance with the terms hereof or of the applicable Collateral Documents to grant Liens to the Administrative Agent, for the benefit of itself and the Lenders and each other Secured Party, in each case to the extent required by the terms thereof, in any property (subject to the limitations with respect to Capital Stock set forth in paragraph (b) of this Section 5.12, the limitations with respect to real property set forth in paragraph (d) of this Section 5.12, and any other limitations set forth in the Pledge and Security Agreement) of such Loan Party which constitutes Collateral (including any Material Real Estate Assets), on such terms as may be required pursuant to the terms of the Collateral Documents, and with respect to Material Real Estate Assets, take such actions described in paragraph (d) of this Section.

(b) Each Loan Party will cause all Capital Stock directly owned by it to be subject at all times to a First Priority perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Collateral Documents (other than Capital Stock in Osmotica BVI, so long as Osmotica

BVI is not a Loan Party); provided that, in the case of voting Capital Stock of After-Acquired CFCs and Disregarded Domestic Subsidiaries, such pledge shall be limited to 65.0% of the voting Capital Stock of any first-tier After-Acquired CFC or Disregarded Domestic Subsidiary of such Loan Party.

(c) Without limiting the foregoing, each Loan Party will, and will cause each of its Subsidiaries that is a Loan Party to, promptly execute and deliver, or cause to be promptly executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Article 4, as applicable), which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents (to the extent required herein or therein), all at the expense of the Loan Parties.

(d) Subject to the limitations set forth or referred to in this Section 5.12, if any Material Real Estate Asset is acquired by any Loan Party after the Closing Date (other than any asset constituting Collateral under the Pledge and Security Agreement that becomes subject to the Lien in favor of the Administrative Agent upon acquisition thereof), the Borrower Representative will notify the Administrative Agent and the Lenders thereof, and, if requested by the Administrative Agent or the Required Lenders, within 90 days of such request (or such longer period as may be acceptable to the Administrative Agent) such Loan Party will cause such assets to be subjected to a Lien securing the Secured Obligations and will take, and cause each Subsidiary that is a Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section and delivery of flood hazard determination forms, title insurance policies (including any endorsements thereto), surveys and local counsel opinions, all at the expense of the Loan Parties.

(e) After any Domestic Subsidiary ceases to constitute an Excluded Subsidiary in accordance with the definition thereof, the Borrowers shall cause such Domestic Subsidiary to take all actions required by this Section 5.12 (within the time periods specified herein) as if such Domestic Subsidiary were then formed or acquired.

Section 5.13. Post-Closing Items.

(a) The Loan Parties shall, as promptly as practicable and in no event later than 90 days following the Closing Date (or such longer period as the Administrative Agent may reasonably determine in its sole discretion), deliver evidence of insurance coverage in compliance with the terms of Section 5.05 hereof (including with respect to any endorsements referenced therein), to the extent not previously delivered in accordance herewith.

(b) Each Loan Party will, and will cause each of its Subsidiaries that is a Loan Party to enter into, and cause each depository, securities intermediary or commodities intermediary to enter into, Control Agreements (or, in the case of (x) Hungarian Holdings, Hungarian Security Deposit Agreements and (y) Osmotica Cyprus, the Cyprus Charge over Bank Accounts) with respect to each deposit, securities, commodity or similar account maintained by such Person other than Excluded Accounts not later than 60 days following the Closing Date (or such later date as the Administrative Agent may reasonably determine in its sole discretion).

(c) If Osmotica BVI shall not have been dissolved on or prior to the date that is 120 days (or such later date as the Administrative Agent may determine in its sole discretion) after the Closing Date, the Loan Parties shall cause Osmotica BVI to become a Loan Party (and all Capital Stock in Osmotica BVI to be subject to a First Priority perfected Lien in favor of the Administrative Agent) on or prior to such date, by executing and delivering a Joinder Agreement, a Security Agreement Joinder Agreement, a pledge agreement with respect to all Capital Stock in Osmotica BVI and such other security documents in form and substance reasonably acceptable to the Administrative Agent, together with a legal opinion of British Virgin Islands counsel to Osmotica BVI with respect to the such documents in form and substance reasonably acceptable to the Administrative Agent. Upon execution and delivery thereof, Osmotica BVI (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will simultaneously therewith deliver a completed Perfection Certificate and simultaneously therewith or as soon as practicable thereafter (and in any event within 45 days thereafter (as may be extended at the discretion of the Administration Agent)) take such actions as may be required in accordance with the terms hereof or of the applicable Collateral Documents to grant Liens to the Administrative Agent, for the benefit of itself and the Lenders and each other Secured Party, in each case to the extent required by the terms thereof, in any property (subject to the limitations with respect to Capital Stock set forth in paragraph (b) of Section 5.12, the limitations with respect to real property set forth in paragraph (d) of Section 5.12, and any other limitations set forth in the Pledge and Security Agreement) of such Loan Party which constitutes Collateral (including any Material Real Estate Assets), on such terms as may be required pursuant to the terms of the Collateral Documents, and with respect to Material Real Estate Assets, take such actions described in paragraph (d) of Section 5.12.

(d) Not later than 60 days following the Closing Date (or such later date as the Administrative Agent may reasonably determine in its sole discretion), Osmotica Cyprus shall take such action as may be necessary to grant the Administrative Agent a security interest in all its assets (other than the Capital Stock of Osmotica BVI), including the execution and delivery of the Cyprus Debenture and delivery of a legal opinion with respect thereto, and shall take all other applicable actions, as reasonably required by the Administrative Agent, including, but not limited to, those described in Sections 4.01(m)(i) and (ii) and 5.12 with respect to Osmotica Cyprus and its assets and the registration of such security interest.

(e) The Administrative Agent shall receive evidence of the filing, registration or recordation of each filing, registration or recordation with the Registrar, of the changes in the shareholding structure and in the composition of the board of directors of Osmotica Cyprus, effected pursuant to the transactions contemplated by the Acquisition and/or the Acquisition Agreement, including, but not limited to, HE57 and HE4 forms, duly stamped as received by the Registrar, each certified as a true copy by the corporate secretary of Osmotica Cyprus, not later than one Business Day after the Closing Date (or such later date as the Administrative Agent may reasonably determine in its sole discretion). Promptly upon, and in any event no later than 20 Business Days (or such longer period as the Administrative Agent may reasonably determine in its sole discretion) following, the Closing Date, Osmotica Cyprus shall deliver to the Administrative Agent (or its Cyprus counsel) a Tax Residence Certificate duly issued by the Cyprus Income Tax Office of the Cyprus Ministry of Finance, certified as a true copy of the original by the corporate secretary of Osmotica Cyprus.

(f) Each Loan Party shall cause each Material Real Estate Asset owned by such Loan Party on the Closing Date to be subjected to a Lien securing the Secured Obligations pursuant to a Mortgage in form and substance acceptable to the Administrative Agent, and will take, and cause each Subsidiary that is a Loan Party to take, such actions as shall be necessary or reasonably requested by the

Administrative Agent to grant and perfect such Liens, including actions described in Section 5.12(c) and delivery of flood hazard determination forms, title insurance policies (including any endorsements thereto), surveys and local counsel opinions, all at the expense of the Loan Parties.

(g) Promptly upon, and in any event no later than 10 Business Days (or such longer period as the Administrative Agent may reasonably determine in its sole discretion) following, the designation by the Administrative Agent of the applicable bank account in Hungary to be set forth therein, Hungarian Holdings will execute and deliver a Hungarian Authorization Letter with respect to each bank account of Hungarian Holdings in Hungary (other than any Excluded Account).

(h) The Loan Parties shall cause RevitaLid to become a Loan Party on or prior to January 31, 2018 (or such later date as the Administrative Agent may determine in its sole discretion), by executing and delivering a Joinder Agreement and a Security Agreement Joinder Agreement. Upon execution and delivery thereof, RevitaLid (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will simultaneously therewith deliver a completed Perfection Certificate and simultaneously therewith or as soon as practicable thereafter (and in any event within 45 days thereafter (as may be extended at the discretion of the Administration Agent)) take such actions as may be required in accordance with the terms hereof or of the applicable Collateral Documents to grant Liens to the Administrative Agent, for the benefit of itself and the Lenders and each other Secured Party, in each case to the extent required by the terms thereof, in any property (subject to the limitations with respect to Capital Stock set forth in paragraph (b) of Section 5.12, the limitations with respect to real property set forth in paragraph (d) of Section 5.12, and any other limitations set forth in the Pledge and Security Agreement) of such Loan Party which constitutes Collateral (including any Material Real Estate Assets), on such terms as may be required pursuant to the terms of the Collateral Documents, and with respect to Material Real Estate Assets, take such actions described in paragraph (d) of Section 5.12.

ARTICLE 6 NEGATIVE COVENANTS

Until the Termination Date has occurred, each of the Loan Parties hereby covenants and agrees with the Lenders that:

Section 6.01. Indebtedness. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations (including any Additional Term Loans and Additional Revolving Loans);

(b) Indebtedness of any Subsidiary of Holdings to any other Subsidiary; provided that in the case of any Indebtedness of a Subsidiary (x) that is not a Loan Party owing to a Loan Party or (y) that is not a Specified Loan Party owing to a Specified Loan Party, in each case such Indebtedness shall be permitted as an Investment by Section 6.03; provided, further, that (A) all such Indebtedness shall be evidenced by intercompany promissory notes and all such notes owned or held by a Loan Party shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement and (B) with respect to all such Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party such Indebtedness must be expressly subordinated to the Obligations of such Loan Party on terms reasonably acceptable to the Administrative Agent;

(c) [Reserved];

(d) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including contingent earn-out obligations) incurred in connection with any Disposition permitted hereunder or Permitted Acquisitions permitted hereunder or other purchases of assets or Indebtedness arising from guaranties, letters of credit, surety bonds or performance bonds securing the performance of any member of the Combined Group pursuant to such agreements;

(e) Indebtedness which may be deemed to exist pursuant to any tenders, statutory obligations, surety, stay, customs, appeal, bid, leases, governmental contracts, trade contracts, performance and return of money bonds or other similar obligations incurred in the ordinary course of business, in each case not constituting any Indebtedness for borrowed money, and in respect of any letters of credit related thereto;

(f) Indebtedness in respect of (i) commercial credit cards, stored value cards, purchasing cards and treasury management services, including Banking Services Obligations, and other netting services, overdraft protections, automated clearing-house arrangements, employee credit card programs, controlled disbursement, ACH transactions, return items and interstate depository network services and, in each case, similar arrangements and otherwise in connection with Cash management and Deposit Accounts and (ii) Securities that are the subject of repurchase agreements constituting Investments permitted under Section 6.03 arising out of repurchase transactions;

(g) (i) guaranties of the obligations of suppliers, customers and licensees in the ordinary course of business, (ii) Indebtedness incurred in the ordinary course of business of a member of the Combined Group in respect of obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (iii) Indebtedness in respect of any bankers' acceptance supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business;

(h) Guarantees of Indebtedness or other obligations of any Subsidiary with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01 (except with respect to clause (o)) or obligations not prohibited by this Agreement; provided that in the case of any Guarantees (x) by a Loan Party of the obligations of a non-Loan Party or (y) by a Specified Loan Party of the Obligations of a Loan Party that is not a Specified Loan Party, in each case the related Investment is permitted under Section 6.03; provided, further, that (A) no Guarantee by any Subsidiary of any Indebtedness constituting Subordinated Indebtedness or Junior Lien Indebtedness shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein, (B) if the Indebtedness being Guaranteed is Subordinated Indebtedness, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable (as reasonably determined by the Borrower Representative) to the Lenders as those contained in the subordination terms of such Indebtedness and (C) any Guarantee by a Subsidiary that is not a Loan Party of any Indebtedness under Sections 6.01(n), (q) and (t) (or any Refinancing Indebtedness in respect thereof) shall only be permitted if such Guarantee meets the requirements of Sections 6.01(n), (q) or (t), as the case may be;

(i) Indebtedness with respect to Capital Lease, equipment and insurance financing obligations, in each case, listed on Schedule 6.01 on the Third Amendment Effective Date;

(j) Indebtedness of Subsidiaries that are not Loan Parties; provided that the aggregate outstanding principal amount of such Indebtedness shall not exceed $5,000,000;

(k) Indebtedness consisting of obligations owing under dealer incentive, supply, license or similar agreements entered into in the ordinary course of business;

(l) Indebtedness of any Subsidiary consisting of (i) the financing of insurance premiums, (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business and/or (iii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business;

(m) Indebtedness with respect to (i) Capital Leases and purchase money Indebtedness incurred prior to or within 270 days of the acquisition, lease, completion of construction, repair of, replacement, improvement to or installation of the assets acquired in connection with the incurrence of such Indebtedness in an aggregate outstanding principal amount not to exceed $7,500,000 and (ii) any refinancing of such Indebtedness permitted under Section 6.01(p) (without duplication of amounts permitted under this clause (m));

(n) Indebtedness of a Person that becomes a Subsidiary or Indebtedness assumed in connection with a Permitted Acquisition after the Closing Date; provided that (i) such Indebtedness (A) existed at the time such Person became a Subsidiary or the assets subject to such Indebtedness were acquired and (B) was not created in anticipation thereof, (ii) no Event of Default exists or would result therefrom, (iii) the Total Leverage Ratio would not exceed 3.50:1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01, and (iv) if such Indebtedness is being assumed by Subsidiaries that are not Loan Parties, the aggregate outstanding principal amount of such Indebtedness, when aggregated with the outstanding principal amount of all Indebtedness of Subsidiaries that are not Loan Parties pursuant to Sections 6.01(q) and 6.01(t), shall not exceed $5,000,000;

(o) Indebtedness consisting of unsecured subordinated promissory notes in form and substance reasonably acceptable to the Administrative Agent issued by any Borrower to any stockholders of any Parent Company or any current or former directors, officers, employees, members of management or consultants of any Parent Company or any member of the Combined Group (or their Immediate Family Members) and not Guaranteed by a Subsidiary of Holdings to finance the purchase or redemption of Capital Stock of any Parent Company permitted by Section 6.04;

(p) Indebtedness refinancing, refunding or replacing any Indebtedness permitted under clauses (a), (c), (i), (m), (n), (q), (t), (u) and (v) of this Section 6.01 (in any case, including any refinancing Indebtedness incurred in respect thereof, "**Refinancing Indebtedness**") and any subsequent Refinancing Indebtedness in respect thereof; provided that (i) the principal amount of such Indebtedness does not exceed the principal amount of the Indebtedness being refinanced, refunded or replaced, except (A) by an amount equal to unpaid accrued interest and premiums (including tender premiums) thereon *plus* underwriting discounts, other reasonable and customary fees, commissions and expenses (including upfront fees and OID) incurred in connection with such refinancing or replacement, (B) by an amount equal to any existing commitments unutilized thereunder and (C) by additional amounts permitted to be incurred pursuant to this Section 6.01 (so long as such additional Indebtedness meets the other applicable requirements of this definition and, if secured, Section 6.02), (ii) other than in the case of Refinancing Indebtedness with respect to clauses (i), (m) or (n), such Indebtedness has a final maturity on or later than (and, in the case of revolving Indebtedness, shall not require mandatory commitment reductions, if any, prior to) the final maturity of the Indebtedness being refinanced, refunded or replaced and, other than with respect to revolving Indebtedness, a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being refinanced, refunded or replaced, (iii) the

terms of such Refinancing Indebtedness (excluding pricing, fees, premiums, rate floors, optional prepayment or optional redemption terms (and, if applicable, subordination terms) and, with respect to Refinancing Indebtedness with respect to clauses (a), (c) and, if applicable, (v) of this Section 6.01, security), are not, taken as a whole (as reasonably determined by the Borrower Representative), more favorable to the lenders providing such Indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than any covenants or any other provisions applicable only to periods after the Latest Maturity Date as of such date or any covenants or provisions which are on then-current market terms for the applicable type of Indebtedness), (iv) except in the case of Refinancing Indebtedness with respect to clause (a), such Indebtedness is secured only by Permitted Liens securing the Indebtedness being refinance, refunded or replaced at the time of such refinancing, refunding or replacement and, if secured by Collateral, be subject to an intercreditor agreement on terms reasonably satisfactory to the Administrative Agent (it being understood, however, that such Indebtedness may go from being secured to being unsecured), (v) such Indebtedness is incurred by the obligor or obligors in respect of the Indebtedness being refinanced, refunded or replaced, (vi) if the Indebtedness being refinanced, refunded or replaced was originally contractually subordinated to the Obligations in right of payment (or the Liens securing such Indebtedness were originally contractually subordinated to the Collateral), such Indebtedness is contractually subordinated to the Obligations in right of payment (or the Liens securing such Indebtedness shall be subordinated to the Collateral) on terms not less favorable, taken as a whole, to the Lenders than those applicable to the Indebtedness (or Liens, as applicable) being refinanced, refunded or replaced, taken as a whole, (vii) Indebtedness of any Borrower or any Subsidiary thereof shall not refinance Indebtedness of an Unrestricted Subsidiary, (viii) except in the case of clause (a), as of the date of incurring such Indebtedness and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (ix) in the case of Refinancing Indebtedness with respect to clause (a), (A) such Indebtedness shall be *pari passu* or junior in right of payment and be secured by the Collateral on a *pari passu* or junior basis with the remaining Obligations hereunder, or shall be unsecured; provided that any such Indebtedness that is *pari passu* or junior with respect to the Collateral shall be subject to an intercreditor agreement on terms reasonably satisfactory to the Administrative Agent, (B) if such Indebtedness being refinanced, refunded or replaced is secured, it shall not be secured by any assets other than the Collateral and shall be secured pursuant to security documentation that is no more restrictive on the Loan Parties than the Loan Documents, (C) if such Indebtedness being refinanced, refunded or replaced is Guaranteed, it shall not be Guaranteed by any Person other than Holdings, the Borrowers and the Subsidiary Guarantors, (D) such Indebtedness is incurred under (and pursuant to) documentation other than this Agreement, (E) any prepayment (other than scheduled amortization payments) of any such Refinancing Indebtedness in the form of term loans shall be made on a pro rata basis with all then existing Term Loans (and all other then-existing Additional Term Loans requiring ratable prepayment), except that the Borrowers and the lenders in respect of such Refinancing Indebtedness shall be permitted, in their sole discretion, to elect to prepay or receive, as applicable, any prepayments on a less than *pro rata* basis (but not on a greater than *pro rata* basis) and (F) in the case of any Refinancing Indebtedness that is in the form of revolving Indebtedness, such Indebtedness will be subject to the same terms and conditions as those applicable to the Revolving Facility (and be deemed added to and made a part of the Revolving Facility) and (x) in the case of any Refinancing Indebtedness, the incurrence of such Refinancing Indebtedness shall be without duplication of any amounts outstanding under the applicable clauses of this Section 6.01;

(q) Indebtedness incurred to finance Permitted Acquisitions after the Closing Date; provided that (i) no Event of Default exists (or would result therefrom), (ii) the Total Leverage Ratio would not exceed 3.50:1.00, calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 (determined without netting the proceeds of any such incurrence and assuming all such Indebtedness would be deemed

to be Consolidated Secured Debt, whether or not satisfying the requirements therefor), (iii) any such Indebtedness shall not mature prior to the Latest Maturity Date then in effect, (iv) the Weighted Average Life to Maturity of such Indebtedness shall be no shorter than the shortest remaining Weighted Average Life to Maturity of any Class of Term Loans and any Additional Term Loans, (v) the terms of such Indebtedness are not, taken as a whole (as reasonably determined by the Borrower Representative), more favorable to the lenders providing such Indebtedness than those applicable to the Loans (other than any covenants or any other provisions applicable only to periods after the Latest Maturity Date as of such date or any covenants or provisions which are on then-current market terms for the applicable type of Indebtedness), (vi) the aggregate outstanding principal amount of such Indebtedness that is incurred by Subsidiaries that are not Loan Parties, when aggregated with the outstanding principal amount of all Indebtedness of Subsidiaries that are not Loan Parties pursuant to Sections 6.01(n) and 6.01(t), shall not exceed $5,000,000 and (vii) any such Indebtedness that is secured by a Lien on the Collateral that is *pari passu* or junior to the Liens on the Collateral held by the Administrative Agent shall be subject to an intercreditor agreement on terms reasonably satisfactory to the Administrative Agent;

(r) Indebtedness under any Derivative Transaction not entered into for speculative purposes;

(s) Indebtedness in an aggregate outstanding principal amount not to exceed $10,000,000;

(t) additional unsecured Indebtedness so long as at the time of incurrence the Total Leverage Ratio would not exceed 3.50:1.00, calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 prior to the date of the incurrence thereof; provided that (i) the final maturity date with respect to any such Indebtedness shall be no earlier than the Latest Maturity Date then in effect, (ii) the Weighted Average Life to Maturity of such Indebtedness shall be no shorter than the shortest remaining Weighted Average Life to Maturity of any Class of Term Loans and any Additional Term Loans, (iii) the terms of such Indebtedness are not, taken as a whole (as reasonably determined by the Borrower Representative), more favorable to the lenders providing such Indebtedness than those applicable to the Loans (other than any covenants or any other provisions applicable only to periods after the Latest Maturity Date as of such date or any covenants or provisions which are on then-current market terms for the applicable type of Indebtedness) and (iv) the aggregate outstanding principal amount of such Indebtedness that is incurred by Subsidiaries that are not Loan Parties, when aggregated with the outstanding principal amount of all Indebtedness of Subsidiaries that are not Loan Parties pursuant to Sections 6.01(n) and 6.01(q), shall not exceed $5,000,000;

(u) Indebtedness incurred in connection with Sale and Lease-Back Transactions permitted pursuant to Section 6.09;

(v) secured or unsecured notes issued by the Borrowers in lieu of Incremental Loans (such notes, "**Incremental Equivalent Debt**"); provided that (i) the aggregate outstanding principal amount (or committed amounts, if applicable) of all Incremental Equivalent Debt, together with the aggregate outstanding principal amount (or committed amount, if applicable) of all Incremental Loans and Incremental Commitments provided pursuant to Section 2.21, shall not exceed the Incremental Cap, (ii) the incurrence of such Indebtedness shall be subject to clauses (vi), (vii) and (x) of the proviso to Section 2.21(a) and the Administrative Agent having received a certificate from a Responsible Officer of the Borrower Representative consistent with the certificate required by Section 2.21(d)(iii)(B), (iii) any such notes that are secured shall be secured only by the Collateral and on a *pari passu* or junior basis with

the Secured Obligations, (iv) any such Indebtedness that ranks *pari passu* in right of security or is subordinated in right of payment or security shall be subject to intercreditor arrangements reasonably satisfactory to the Administrative Agent, (v) such Incremental Equivalent Debt shall not be guaranteed by any Person that is not a Loan Guarantor, (vi) such Incremental Equivalent Debt shall not be prepaid (other than scheduled amortization payments) on a more than pro rata basis with the then existing Term Loans and (vii) the terms of such Incremental Equivalent Debt are not, taken as a whole (as reasonably determined by the Borrower Representative), more favorable to the lenders or noteholders providing such Indebtedness than those applicable to the Loans (other than any covenants or any other provisions applicable only to periods after the Latest Maturity Date as of such date or any covenants or provisions which are on then-current market terms for the applicable type of Incremental Equivalent Debt);

(w) Indebtedness (including obligations in respect of letters of credit or bank guarantees or similar instruments with respect to such Indebtedness) in respect of workers compensation claims, unemployment insurance (including premiums related thereto), other types of social security, pension obligations, vacation pay, health, disability or other employee benefits;

(x) Indebtedness representing (i) deferred compensation to current or former directors, officers, employees, members of management and consultants of any member of the Combined Group in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any Permitted Acquisition or any other Investment permitted hereby;

(y) Indebtedness in respect of any letter of credit issued in favor of any Issuing Bank or Swingline Lender to support any Defaulting Lender's participation in Letters of Credit, or Swingline Loans made, hereunder;

(z) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the ordinary course of business to the extent that such unfunded amounts would not otherwise cause an Event of Default under Section 7.01(i); and

(aa) without duplication of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment-in-kind interest), accretion or amortization of OID, fees, expenses and charges with respect to Indebtedness permitted hereunder.

Notwithstanding anything to the contrary contained in this Section 6.01, none of the Loan Parties nor their Subsidiaries may incur any Indebtedness in the form of term loans (other than any Incremental Term Facility incurred in accordance with Section 2.21, Extended Term Loans incurred pursuant to Section 2.22 or Replacement Term Loans incurred pursuant to Section 9.02(c)) that are secured by any Liens on any Collateral unless such Liens are subordinate to the Liens securing the Obligations pursuant to an intercreditor arrangement reasonably acceptable to the Administrative Agent.

Section 6.02. Liens. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, create, incur, assume or permit or suffer to exist any Lien on or with respect to any property or asset of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens granted pursuant to the Loan Documents securing the Secured Obligations;

(b) Liens for Taxes, assessments or other governmental charges or levies which are (i) not then due, (ii) not at such time required to be paid pursuant to Section 5.03 or (iii) which are being contested in accordance with Section 5.03;

(c) statutory Liens of landlords, banks (and rights of set-off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (i) for amounts not yet overdue by more than 30 days, (ii) for amounts that are overdue by more than 30 days and that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts or (iii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) Liens incurred (i) in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) pursuant to pledges and deposits of Cash or Cash Equivalents in the ordinary course of business securing liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty, liability or other insurance to Holdings and its subsidiaries and (iv) to secure obligations in respect of letters of credit or bank guarantees posted with respect to the items described in clauses (i) through (iii) above;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not, in the aggregate, materially interfere with the ordinary conduct of the business of the Combined Group, taken as a whole, or the use of the affected property for its intended purpose;

(f) any (i) interest or title of a lessor or sub-lessor under any lease of real estate permitted hereunder, (ii) landlord lien permitted by the terms of any lease, (iii) restriction or encumbrance to which the interest or title of such lessor or sub-lessor may be subject or (iv) subordination of the interest of the lessee or sub-lessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);

(g) Liens solely on any Cash earnest money deposits made by any member of the Combined Group in connection with any letter of intent or purchase agreement with respect to any Investment permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) Liens in connection with any zoning, building or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any or dimensions of real property or the structure thereon;

(k) Liens securing Indebtedness permitted pursuant to Section 6.01(p) (solely with respect to the permitted refinancing of Indebtedness permitted pursuant to Sections 6.01(a), (i), (m), (n), (q) and (v)); provided that (i) any such Lien does not extend to any asset not covered by the Lien securing the Indebtedness that is refinanced and (ii) if the Indebtedness being refinanced was subject to intercreditor arrangements, then any refinancing Indebtedness in respect thereof shall be subject to

intercreditor arrangements not less favorable, taken as a whole, than the intercreditor arrangements governing the Indebtedness that is refinanced or shall be otherwise reasonably acceptable to the Administrative Agent;

(l) Liens described on Schedule 6.02 on the Third Amendment Effective Date and any modifications, replacements, refinancings, renewals or extensions thereof; provided that (i) no such Lien extends to any additional property 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 6.01 and (B) proceeds and products thereof, accessions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) and (ii) the modification, replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens, if constituting Indebtedness, is permitted by Section 6.01;

(m) Liens arising out of Sale and Lease-Back Transactions permitted under Section 6.09;

(n) Liens securing Indebtedness permitted pursuant to Section 6.01(m); provided that any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and proceeds and products thereof, accessions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates);

(o) Liens securing Indebtedness permitted pursuant to Sections 6.01(n) and (q) on assets acquired or on the Capital Stock and assets of the relevant newly acquired Subsidiary; provided that such Lien (x) does not extend to or cover any other assets (other than the proceeds or products thereof, accessions or additions thereto and improvements thereon) and (y) in the case of Indebtedness permitted pursuant to Section 6.01(n) was not created in contemplation of the applicable acquisition of assets or Capital Stock; provided that the Total Leverage Ratio calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 would not exceed 3.50:1.00 (determined without netting the proceeds of any such incurrence and assuming all such Indebtedness would be deemed to be Consolidated Secured Debt, whether or not satisfying the requirements therefor);

(p) Liens that are contractual rights of setoff (i) relating to the establishment of depositary relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of any Borrowers or any of its Subsidiaries, (iii) relating to purchase orders and other agreements entered into with customers of any Borrower or any of its Subsidiaries in the ordinary course of business, (iv) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business and (v) encumbering reasonable customary initial deposits and margin deposits;

(q) Liens on assets and Capital Stock of Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness of Subsidiaries that are not Loan Parties permitted pursuant to Section 6.01;

(r) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of any Borrower or any of its Subsidiaries;

(s) Liens disclosed in the title insurance policies delivered pursuant to Section 5.12 with respect to any Mortgaged Property and any replacement, extension or renewal of any such Lien; provided that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal (except as otherwise permitted under this Section 6.02);

(t) Liens on Collateral securing Indebtedness incurred pursuant to Sections 6.01(v); provided that holders of all such Indebtedness (or a trustee or other representatives acting for such holders) shall be a party to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent;

(u) other Liens on assets securing Indebtedness or other obligations in an aggregate principal amount at any time outstanding not to exceed $10,000,000;

(v) Liens on assets securing judgments for the payment of money not constituting an Event of Default under Section 7.01(h);

(w) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of any Borrower or any of its Subsidiaries (other than an Immaterial Subsidiary) or (ii) secure any Indebtedness;

(x) Liens securing obligations in respect letters of credit permitted under Sections 6.01(e), (w), (y) and (z);

(y) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of any assets or property in the ordinary course of business and permitted by this Agreement;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(bb) Liens securing (i) obligations under Hedge Agreements in connection with any Derivative Transactions of the type described in Section 6.01(r) and (ii) obligations of the type described in Section 6.01(f); and

(cc) (i) Liens on Capital Stock of joint ventures or Unrestricted Subsidiaries securing capital contributions to, or obligations of, such Persons and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements.

Section 6.03. Investments. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, make or own any Investment in any Person except:

(a) Cash or Cash Equivalents;

(b) (i) Investments existing on the Third Amendment Effective Date in any member of the Combined Group, (ii) Investments made after the Third Amendment Effective Date in any member of the Combined Group that is a Loan Party, so long as, in the case of this clause (ii), the aggregate amount of all such Investments by any Specified Loan Party in any Loan Party that is not a Specified Loan Party outstanding at any time does not exceed, together with any Investments made in any Loan Party that is not a Specified Loan Party in reliance on clause (x) of this Section 6.03, $5,000,000 and (iii) Investments by a Loan Party in a non-Loan Party consisting of the contribution or Disposition of the Capital Stock of any Person which is not a Loan Party;

(c) Investments (i) constituting deposits, prepayments and other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and (iii) in the form of advances made to distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business;

(d) Investments (i) by any Subsidiary that is not a Loan Party in any other member of the Combined Group that is not a Loan Party and (ii) by any Loan Party in any member of the Combined Group that is not a Loan Party so long as, in the case of this clause (ii), the aggregate amount of any such Investments made and outstanding at any time does not exceed $6,000,000 per Fiscal Year;

(e) (i) Permitted Acquisitions and (ii) Investments in any member of the Combined Group that is not a Loan Party in an amount required to permit such Subsidiary to consummate a Permitted Acquisition (so long as the consideration of such Permitted Acquisition shall be included for the purposes of calculating any amount available for Permitted Acquisitions pursuant to clause (c) of the proviso to the definition of "Permitted Acquisition");

(f) Investments existing on, or contractually committed to as of, the Third Amendment Effective Date and described on Schedule 6.03 and any modification, replacement, renewal or extension thereof so long as such modification, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 6.03;

(g) Investments received in lieu of Cash in connection with any Disposition permitted by Section 6.06;

(h) loans or advances to present or former employees, directors, members of management, officers, managers, consultants, independent contractors or other service providers (or their respective Immediate Family Members) of any Parent Company or any member of the Combined Group to the extent permitted by Requirements of Law, in connection with such Person's purchase of Capital Stock of any Parent Company, in an aggregate principal amount not to exceed $3,000,000 at any one time outstanding;

(i) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(j) Investments consisting of Indebtedness permitted under Section 6.01 (other than Indebtedness permitted under Sections 6.01(b) and (h)), Permitted Liens, Restricted Payments permitted

under Section 6.04 (other than Section 6.04(i)), Restricted Debt Payments permitted under Section 6.05 and mergers, consolidations or dispositions permitted under Section 6.06 (other than Section 6.06(a) (if made in reliance on sub-clause (ii)(y)), Section 6.06(b) (if made in reliance on clause (ii)), Section 6.06(c) (if made in reliance on the proviso therein) and Section 6.06(g));

(k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers;

(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other financially troubled account debtors arising in the ordinary course of business, (iii) upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and/or (iv) as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;

(m) loans and advances of payroll payments or other compensation to present or former employees, directors, members of management, officers, managers or consultants of any Parent Company (to the extent attributable to the ownership or operation of the Loan Parties and their Subsidiaries), the Loan Parties or any Subsidiary in the ordinary course of business;

(n) Investments to the extent that payment for such Investments is made solely with Capital Stock of Holdings or any Parent Company, in each case, to the extent not resulting in a Change of Control;

(o) (i) Investments of any Person acquired by, or merged into or consolidated or amalgamated with, any Borrower or any of its Subsidiaries after the Closing Date, in each case pursuant to an Investment otherwise permitted by this Section 6.03 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 6.03(o) so long as any such modification, replacement, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 6.03;

(p) the Transactions;

(q) Investments made after the date hereof in an aggregate amount at any time outstanding not to exceed $15,000,000;

(r) so long as no Event of Default then exists or would result therefrom, Investments made after the date hereof in an aggregate amount not to exceed the portion, if any, of the Available Amount on the date of such Investments that any Subsidiary elects to apply to this clause (r);

(s) Guarantees of leases (other than Capital Leases) or of other obligations not constituting Indebtedness;

(t) Investments in Holdings in amounts and for purposes for which Restricted Payments to Holdings are permitted under Section 6.04(a); provided that any such Investments made as provided above in lieu of such Restricted Payments shall reduce availability under the applicable Restricted Payment basket under Section 6.04(a);

(u) Investments made by any Subsidiary that is not a Loan Party to the extent such Investments are made with the proceeds received by such Subsidiary from an Investment made by a Loan Party in such Subsidiary pursuant to this Section 6.03 (other than Investments pursuant to clause (ii) of Section 6.03(e));

(v) Investments under any Derivative Transactions of the type permitted to be entered into under Section 6.01(s);

(w) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that they are permitted to remain unfunded under applicable law;

(x) Investments in members of the Combined Group or any joint venture in connection with intercompany cash management arrangements and related activities in each case in the ordinary course of business so long as, the aggregate amount of all such Investments by any Specified Loan Party in any Loan Party that is not a Specified Loan Party outstanding at any time does not exceed, together with any Investments made in any Loan Party that is not a Specified Loan Party in reliance on clause (b)(ii) of this Section 6.03, $5,000,000; and

(y) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons.

Section 6.04. Restricted Payments. No Loan Party shall pay or make, directly or indirectly, any Restricted Payment except:

(a) any Loan Party may make Restricted Payments to the extent necessary to permit any Parent Company:

(i) to pay general administrative costs and expenses (including corporate overhead, legal or similar expenses and customary wages, salary, bonus, severance and other benefits payable to directors, officers, employees, members of management, consultants and/or independent contractors of any Parent Company) and franchise fees and Taxes and similar fees, Taxes and expenses required to maintain the organizational existence of such Parent Company and any Public Company Costs, in each case, which are incurred in the ordinary course of business, plus any reasonable and customary indemnification claims made by directors, officers, members of management, employees or consultants of any Parent Company, in each case, to the extent attributable to the ownership or operations of the Combined Group;

(ii) for any taxable period in which taxable income of the Combined Group or any member of such group is included in the Tax return of a Parent Company, to pay such Parent Company an amount not to exceed the Tax liabilities that the Combined Group or the applicable members of such group (other than Unrestricted Subsidiaries, except to the extent of cash received for the payment thereof by the Loan Parties or Subsidiaries from Unrestricted Subsidiaries), in the aggregate, would have been required to pay in respect of such taxable income if such entities were a standalone group of corporations separate from such Parent Company (it being understood and agreed that, if the Combined Group pays any portion of such Tax liabilities directly to any Governmental Authority, a payment in duplication of such amount shall not be permitted to be made pursuant to this Section 6.04(a)(ii)) (a "**Tax Distribution**");

(iii) to pay audit and other accounting and reporting expenses at such Parent Company to the extent relating to the ownership or operations of the Combined Group;

(iv) for the payment of insurance premiums to the extent relating to the ownership or operations of the Combined Group;

(v) pay fees and expenses related to (A) a Qualifying IPO and any secondary offerings or any debt or equity offerings (in each case, whether or not consummated) of Holdings or a Parent Company or (B) investments or acquisitions by, or of, the Combined Group not prohibited by this Agreement (whether or not consummated);

(vi) to pay the consideration to finance any Investment permitted under Section 6.03 (provided that (x) such Restricted Payments under this clause (a)(vi) shall be made substantially concurrently with the closing of such Investment and (y) such Parent Company shall, promptly following the closing thereof, cause all such property acquired to be contributed to one of the Borrowers or one of their Subsidiaries, or the merger, consolidation or amalgamation of the Person formed or acquired into one of the Borrowers or one of its Subsidiaries, in order to consummate such Investment in a manner that causes such Investment to comply with the applicable requirements of Section 6.03 as if undertaken as a direct Investment by such Borrower or such Subsidiary);

(vii) to make payments as required by Section 409(h) of the Code or any substantially similar Requirements of Law; and

(viii) to pay Parent Administrative Expenses in an aggregate amount not to exceed $350,000 in any Fiscal Year.

(b) a Loan Party may pay (or make Restricted Payments to allow any Parent Company to pay) for the repurchase, redemption, retirement or other acquisition or retirement for value of Capital Stock of any Parent Company held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company or any member of the Combined Group:

(i) in accordance with the terms of notes issued pursuant to Section 6.01(o), so long as (x) the aggregate amount of all cash payments made in respect of such notes, together with the aggregate amount of Restricted Payments made pursuant to clause (iv) of this clause (b) below, does not exceed $10,000,000 in any Fiscal Year which, if not used in any Fiscal Year, may be carried forward to the next subsequent Fiscal Year (provided no amounts carried forward into such subsequent Fiscal Year may be used until all amounts permitted for such subsequent Fiscal Year are first used in full) and (y) no Event of Default shall have occurred and be continuing or would result therefrom;

(ii) with the proceeds of any sale or issuance of Capital Stock of any Parent Company (other than any Cure Amount, any equity proceeds of Disqualified Capital Stock, any equity proceeds that are added in determining the Available Amount, any equity proceeds used to fund Permitted Acquisitions pursuant to clause (c) of the definition thereof, and any equity proceeds used to fund Restricted Payments pursuant to Section 6.04(h) or Restricted Debt Payments pursuant to clause (A) of Section 6.05(d));

(iii) with the net proceeds of any key-man life insurance policies; or

(iv) with Cash and Cash Equivalents (x) in an amount not to exceed, together with the aggregate amount of all cash payments made in respect of notes issued pursuant to

Section 6.01(g), $10,000,000 in any Fiscal Year which, if not used in any Fiscal Year, may be carried forward to the next subsequent Fiscal Year (provided no amounts carried forward into such subsequent Fiscal Year may be used until all amounts permitted for such subsequent Fiscal Year are first used in full) and (y) no Event of Default shall have occurred and be continuing or would result therefrom;

(c) the Loan Parties may make additional Restricted Payments in an amount not to exceed so long as no Event of Default shall have occurred and is continuing or would result therefrom, the portion, if any, of the Available Amount on such date that the Borrowers elect to apply to this clause (c); provided that clause (a)(ii) of the definition of "Available Amount" shall not be available for any Restricted Payment pursuant to this Section 6.04(c) at any time when the Total Leverage Ratio as determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 would exceed 2.75:1.00;

(d) the Loan Parties may make Restricted Payments to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of such Parent Company in an aggregate amount not to exceed $250,000 in any Fiscal Year;

(e) the Loan Parties may repurchase Capital Stock upon the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock if such Capital Stock represents all or a portion of the exercise price of such warrants, options or other securities convertible into or exchangeable for Capital Stock as part of a "cashless" exercise;

(f) the Loan Parties may make Restricted Payments, the proceeds of which are applied (i) on the Closing Date, solely to effect the consummation of the Transactions and (ii) on and after the Closing Date, to satisfy any payment obligations owing under the Acquisition Agreement (as in effect on the date hereof);

(g) following the consummation of the first Qualifying IPO, so long as no Event of Default shall have occurred and is continuing on the date of declaration of any such Restricted Payment, the Loan Parties may (or may make Restricted Payments to any Parent Company to enable it to) make Restricted Payments with respect to any Capital Stock in an amount of up to 6% per annum of the net Cash proceeds received by or contributed to the Loan Parties from any such Qualifying IPO;

(h) the Loan Parties may make Restricted Payments to (i) redeem, repurchase, retire or otherwise acquire any (A) Capital Stock ("**Treasury Capital Stock**") of a Loan Party or any Subsidiary or (B) Capital Stock of any Parent Company, in the case of each of subclauses (A) and (B), in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Loan Party or a Subsidiary) of, Qualified Capital Stock of a Loan Party or any Parent Company (other than any Cure Amount, any equity proceeds that are added in determining the Available Amount, any equity proceeds used to fund Permitted Acquisitions pursuant to clause (c) of the definition thereof and any equity proceeds used to fund Restricted Payments pursuant to Section 6.04(b)(ii) or Section 6.04(h)(ii) or Restricted Debt Payments pursuant to clause (A) of Section 6.05(d)) to the extent contributed as a common equity contribution to the capital of a Loan Party or any Subsidiary ("**Refunding Capital Stock**") and (ii) declare and pay dividends on the Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Loan Party or a Subsidiary) of the Refunding Capital Stock (other than any Cure Amount, any equity proceeds that are added in determining the Available Amount, any equity proceeds used to fund Permitted Acquisitions pursuant to clause (c) of the definition thereof

and any equity proceeds used to fund Restricted Payments pursuant to Section 6.04(b)(ii) or Section 6.04(h)(i) or Restricted Debt Payments pursuant to clause (A) of Section 6.05(d));

(i) to the extent constituting a Restricted Payment, the Loan Parties may consummate any transaction permitted by Section 6.03 (other than Sections 6.03(j) and (t)), Section 6.06 (other than Section 6.06(g)) and the proviso to Section 6.10 (other than Section 6.10(d) and (n)); and

(j) additional Restricted Payments in an aggregate amount not to exceed $10,000,000 so long as on the date of declaration of any such Restricted Payment no Default or Event of Default shall have occurred and is continuing; and

(k) the Loan Parties may make Restricted Payments (x) in an amount necessary to effect the Third Amendment Debt Repayment on the Third Amendment Effective Date, and (y) at any time to the extent such Restricted Payment is (1) a distribution of its interest in the Designated PIK Intercompany Loan to Parent or (2) a deemed (but not actual) distribution to Parent in an amount equal to the amount necessary to repay in full the Designated PIK Intercompany Loan, and the concurrent deemed application of such deemed distribution to such repayment in full of the Designated PIK Intercompany Loan, in the case of this sub-clause (2), without the distribution of cash (or other assets) from any Loan Party (other than to any other Loan Party).

Section 6.05. Certain Payments of Indebtedness. None of the Loan Parties shall, nor shall they permit any Subsidiary to make any payment or other distribution, whether in Cash, Securities or other property on or in respect of principal of or interest on any Restricted Debt, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Restricted Debt (collectively, "**Restricted Debt Payments**"), except:

(a) the purchase, defeasance, redemption, repurchase or other acquisition or retirement of Restricted Debt made by exchange for, or out of the proceeds of, Refinancing Indebtedness permitted by Section 6.01;

(b) payments as part of an "applicable high yield discount obligation" catch-up payment so long as no Event of Default shall have occurred and be continuing or would result therefrom;

(c) payments of regularly scheduled interest and fees, expenses and indemnification obligations as and when due in respect of any Indebtedness (other than payments with respect to Subordinated Indebtedness prohibited by the subordination provisions thereof);

(d) (A) payments of any Restricted Debt in exchange for, or with proceeds of any issuance of, Qualified Capital Stock of any Parent Company or any Loan Party and any substantially contemporaneous capital contribution in respect of Qualified Capital Stock of any Loan Party (other than from any Loan Party or any other Subsidiary and (other than any Cure Amount, any equity proceeds of Disqualified Capital Stock, any equity proceeds that are added in determining the Available Amount, any equity proceeds used to fund Permitted Acquisitions pursuant to clause (c) of the definition thereof, and any equity proceeds used to fund Restricted Payments pursuant to Section 6.04(b)(ii) or Section 6.04(h)), (B) Restricted Debt Payments as a result of the conversion of all or any portion of Restricted Debt into Qualified Capital Stock of any Parent Company or any Loan Party and (C) payments of interest in respect of Restricted Debt in the form of payment-in-kind interest with respect to such Indebtedness permitted under Section 6.01;

(e) so long as no Event of Default shall have occurred and is continuing or would result therefrom, Restricted Debt Payments in an aggregate amount not to exceed the portion, if any, of the Available Amount on such date that the Loan Parties elect to apply to this clause (e); provided that clause (a)(ii) of the definition of "Available Amount" shall not be available for any Restricted Debt Payment pursuant to this Section 6.05(e) at any time when the Total Leverage Ratio as determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 would exceed 2.75:1.00; and

(f) so long as no Event of Default shall have occurred and be continuing or would result therefrom, additional Restricted Debt Payments in an aggregate amount not to exceed $5,000,000; provided that no Restricted Debt Payment pursuant to this Section 6.05(f) may be made at any time when the Total Leverage Ratio as determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 would exceed 2.75:1.00; and

(g) payments with respect to intercompany Indebtedness permitted under Section 6.01, subject to the subordination provisions applicable thereto; and

(h) the Third Amendment Debt Repayment.

Section 6.06. Fundamental Changes; Disposition of Assets. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, enter into any transaction of merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or make any Disposition, in a single transaction or a series of related transactions, except:

(a) any Subsidiary may be merged, consolidated or amalgamated with or into a Loan Party or any other Subsidiary; provided that (i) in the case of such a merger, consolidation or amalgamation with or into a Borrower or any Closing Date Guarantor, such Borrower or such Closing Date Guarantor, as applicable, shall be the continuing or surviving Person, and (ii) in the case of such a merger, consolidation or amalgamation with or into any Subsidiary Guarantor (other than a Closing Date Guarantor), either (x) such Subsidiary Guarantor shall be the continuing or surviving Person or the continuing or surviving Person shall assume the guarantee obligations of such Subsidiary Guarantor in a manner reasonably satisfactory to the Administrative Agent or (y) such transaction shall be treated as an Investment and shall comply with Section 6.03 (other than in reliance on clause (j) thereof); provided, further, than no U.S. Loan Party may be merged, consolidated or amalgamated with or into a Subsidiary that is not a U.S. Loan Party;

(b) Dispositions among the members of the Combined Group (upon voluntary liquidation or otherwise); provided that any such Disposition by a Loan Party to a Person that is not a Loan Party or by a Specified Loan Party to a Person that is not a Specified Loan Party shall be (i) for fair market value (as reasonably determined by such Person) so long as any consideration received in the form of intercompany Indebtedness shall meet the requirements set forth in clause (ii) below or (ii) treated as an Investment and otherwise made in compliance with Section 6.03 (other than in reliance on clause (j) thereof);

(c) the liquidation or dissolution of any Subsidiary if the Borrower Representative determines in good faith that such liquidation or dissolution is in the best interests of the Loan Parties, is not materially disadvantageous to the Lenders and either a Loan Party or a Subsidiary receives any assets of such dissolved or liquidated Subsidiary; provided that in the case of a dissolution or liquidation of a

Loan Party that results in a distribution of assets to a subsidiary that is not a Loan Party, such distribution shall be treated as an Investment and shall comply with Section 6.03 (other than in reliance on clause (j) thereof); provided, further, in the case of a change in the form of an entity of any Subsidiary that is a Loan Party, the security interests in the Collateral shall remain in full force and effect and perfected to the same extent as prior to such change;

(d) (x) Dispositions of inventory or equipment in the ordinary course of business (including on an intercompany basis) and (y) the leasing or subleasing of real property in the ordinary course of business;

(e) Dispositions of surplus, obsolete, used or worn out property or other property that, in the reasonable judgment of the Borrower Representative, is no longer useful in the business of any of the Loan Parties (or in the business of any of their Subsidiaries);

(f) sales of Cash Equivalents for the fair market value thereof in the ordinary course of business;

(g) Dispositions, mergers, amalgamations, consolidations or conveyances that constitute Investments permitted under Section 6.03 (other than pursuant to clause (j) or (n)), Permitted Liens, Restricted Payments permitted under Section 6.04 (~~a) (~~other than pursuant to clause (i)) and Sale and Lease-Back Transactions permitted under Section 6.09;

(h) Dispositions of any assets of any Loan Party or any Subsidiary for fair market value; provided that (A) with respect to any such Disposition, as determined on the date on which the agreement governing such Disposition is executed, the aggregate fair market value of all property Disposed of in reliance on this clause (h) (including such Disposition) shall not exceed the lesser of (x) 10% of the Consolidated Total Assets as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01, and (y) $75,000,000, and (B) at least 75% of the consideration for each such Disposition made in reliance on this clause (h) shall consist of Cash or Cash Equivalents (provided that for purposes of the 75% Cash consideration requirement (w) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Obligations or that are owed to any Loan Party or any Subsidiary) of any Loan Party or any Subsidiary (as shown on such person's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets and for which the Loan Parties and their Subsidiaries shall have been validly released by all relevant creditors in writing, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition, (y) any Securities received by any Loan Party or any Subsidiary from such transferee that are converted by such Person into Cash or Cash Equivalents (to the extent of the Cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition and (z) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (z) that is at that time outstanding, not in excess of $5,000,000 in each case, shall be deemed to be Cash); provided, further, that (i) immediately prior to and after giving effect to such Disposition, as determined on the date on which the agreement governing such Disposition is executed, no Event of Default shall exist and (ii) the Net Proceeds of such Disposition shall be applied and/or reinvested as (and to the extent) required by Section 2.10(b)(ii);

(i) to the extent that (i) the relevant property or assets are exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of the relevant Disposition are promptly applied to the purchase price of such replacement property;

(j) Dispositions of Investments in joint ventures or any Subsidiary that is not a Wholly-Owned Subsidiary to the extent required by, or made pursuant to, buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(k) Dispositions, discounting or forgiveness of accounts receivable in the ordinary course of business in connection with the collection or compromise thereof;

(l) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business, which (i) do not materially interfere with the business of the Loan Parties and their Subsidiaries or (ii) relate to closed facilities;

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

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

(o) the Transactions may be consummated;

(p) Dispositions of non-core assets acquired in connection with an acquisition permitted hereunder and sales of Real Estate Assets acquired in an acquisition permitted hereunder which, within 30 days of the date of the acquisition, are designated in writing to the Administrative Agent as being held for sale and not for the continued operation of the Loan Parties' businesses (or that of any Subsidiary); provided that (i) the Net Proceeds received in connection with any such Dispositions shall be applied and/or reinvested as (and to the extent required) by Section 2.10(b)(ii) and (ii) no Event of Default shall have occurred and be continuing or would result therefrom;

(q) exchanges or swaps, including transactions covered by Section 1031 of the Code (or any comparable provision of any foreign jurisdiction) of Real Estate Assets so long as the exchange or swap is made for fair value and on an arms' length basis for other Real Estate Assets; provided that (i) upon the consummation of such exchange or swap, in the case of any Loan Party, the Administrative Agent has a perfected Lien having the same priority as any Lien held on the Real Estate Assets so exchanged or swapped and (ii) any Net Proceeds received as "cash boot" in connection with any such transaction shall be applied and/or reinvested as (and to the extent required) by Section 2.10(b)(ii);

(r) other Dispositions for fair market value in an aggregate amount since the Third Amendment Effective Date of not more than $7,500,000;

(s) (i) licensing and cross-licensing arrangements involving any technology, intellectual property or IP Rights of the Loan Parties or any Subsidiary in the ordinary course of business and (ii) the abandonment, cancellation or lapse of IP Rights, or any issuances or registrations, or applications for issuances or registrations, of any IP Rights, which, in the reasonable good faith determination of the applicable Loan Party, are not necessary for the conduct of the business of such Loan Party and its Subsidiaries;

(t) terminations of Derivative Transactions; and

(u) Dispositions of Capital Stock of Unrestricted Subsidiaries.

To the extent any Collateral is Disposed of as expressly permitted by this Section 6.06 to any Person other than a Loan Party or, if an Event of Default is continuing or would result therefrom, any other Subsidiary, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take, and shall take, any actions deemed appropriate in order to effect the foregoing.

Section 6.07. No Further Negative Pledges. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, except with respect to:

(a) specific property to be sold pursuant to any Disposition permitted by Section 6.06;

(b) restrictions contained in any agreement with respect to Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien, but only if such restrictions apply only to the Person or Persons obligated under such Indebtedness and its or their Subsidiaries or the property or assets securing such Indebtedness;

(c) restrictions contained in the documentation governing Indebtedness permitted by clauses (n), (q), (s), (t) and (v) of Section 6.01 (and clause (p) of Section 6.01 to the extent relating to any refinancing, refunding or replacement of Indebtedness incurred in reliance on clauses (c), (n), (q), (s), (t) and (v) of Section 6.01); provided that any such restrictions in documentation governing indebtedness permitted pursuant to clauses (q), (s), (t) and (v) of Section 6.01 shall permit the Liens created or intended to be created by the Collateral Documents;

(d) restrictions by reason of customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses and other agreements entered into in the ordinary course of business (provided that such restrictions are limited to the relevant leases, subleases, licenses, sublicenses or other agreements and/or the property or assets secured by such Liens or the property or assets subject to such leases, subleases, licenses, sublicenses or other agreements, as the case may be);

(e) Permitted Liens and restrictions in the agreements relating thereto that limit the right to Dispose of or encumber the assets subject to such Liens;

(f) provisions limiting the Disposition or distribution of assets or property in joint venture agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets that are the subject of such agreements (or the Persons the stock of which is the subject of such agreement);

(g) any encumbrance or restriction assumed in connection with an acquisition of property or the Capital Stock of new Subsidiaries, so long as such encumbrance or restriction relates solely to the property so acquired (or to the Person or Persons (and its or their subsidiaries) bound thereby) and was not created in connection with or in anticipation of such acquisition;

(h) restrictions imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements of non-Wholly-Owned Subsidiaries that restrict the transfer of the assets of, or ownership interests in, such partnership, limited liability company, joint venture or similar Person;

(i) restrictions on Cash or other deposits imposed by Persons under contracts entered into in the ordinary course of business or for whose benefit such Cash or other deposits exist;

(j) restrictions set forth in documents which exist on the Third Amendment Effective Date and are listed on Schedule 6.07 hereto;

(k) other restrictions or encumbrances imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (j) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower Representative, no more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 6.08. Restrictions on Subsidiary Distributions. Except as provided herein or in any other Loan Document, or in any agreements with respect to refinancings, renewals or replacements of such Indebtedness permitted by Section 6.01, so long as such refinancing, renewal or replacement does not expand the scope of such Contractual Obligation, none of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to pay dividends or other distributions or make cash loans or advances by any Subsidiary to any Loan Party, except:

(a) in any agreement evidencing (x) Indebtedness of a Subsidiary, other than a Loan Party, permitted by Section 6.01, (y) permitted by Section 6.01 that is secured by a Permitted Lien if such encumbrance or restriction applies only to the Person obligated under such Indebtedness and its Subsidiaries or the property or assets intended to secure such Indebtedness and (z) Indebtedness permitted pursuant to clauses (m), (p) (as it relates to Indebtedness in respect of clauses (a), (m), (q), (s), (n) and (v) of Section 6.01), (q), (s), (n) and (v) of Section 6.01;

(b) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, subleases, licenses, sublicenses, joint venture agreements and similar agreements entered into in the ordinary course of business;

(c) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of, any option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement;

(d) assumed in connection with an acquisition of property or the Capital Stock of any Person, so long as such encumbrance or restriction relates solely to the Person and its Subsidiaries (including the Capital Stock of such Person) and/or property so acquired and was not created in connection with or in anticipation of such acquisition;

(e) in any agreement for the Disposition of a Subsidiary permitted pursuant to Section 6.06 that restricts the payment of dividends or other distributions or the making of cash loans or advances by that Subsidiary pending the Disposition;

(f) in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a *pro rata* basis;

(g) imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements of non-Wholly-Owned Subsidiaries that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture or similar Person;

(h) on Cash or other deposits imposed by Persons under contracts entered into in the ordinary course of business or for whose benefit such Cash or other deposits exist;

(i) set forth in documents which exist on the Third Amendment Effective Date and are listed on Schedule 6.08 hereto; and

(j) restrictions of the types referred to in the first paragraph of this Section 6.08 imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (i) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower Representative, no more restrictive with respect to such restrictions taken as a whole than those in existence prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 6.09. Sales and Lease-Backs. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party or Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than a Loan Party or any of its Subsidiaries) and (b) intends to use for substantially the same purpose as the property which has been or is to be sold or transferred by such Loan Party or Subsidiary to any Person (other than any Loan Party or any of its Subsidiaries) in connection with such lease (such a transaction described herein, a "**Sale and Lease-Back Transaction**"); provided that any Sale and Lease-Back Transaction shall be permitted so long as such Sale and Lease-Back Transaction is either (A) permitted by Section 6.01(m) and Section 6.02(n), or (B)(1) made for Cash consideration, (2) the applicable Loan Party or its applicable Subsidiary would otherwise be permitted to enter into, and remain liable under, the applicable underlying lease and (3) the aggregate fair market value of the assets sold subject to all Sale and Lease-Back Transactions under this clause (B) shall not exceed $7,500,000; provided, further, that the Cobb County Development Lease shall not be prohibited by this Section 6.09.

Section 6.10. Transactions with Affiliates. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any of their Affiliates on terms that are less favorable to such Loan Party or such Subsidiary, as the case may be, than those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate; provided that, the foregoing restriction shall not apply to:

(a) any transaction between or among any member of the Combined Group to the extent permitted or not restricted by this Agreement;

(b) any issuance, sale or grant of securities of any Parent Company or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of any Parent Company or of any Loan Party or any Subsidiary;

(c) (i) any employment agreements, severance agreements or compensatory (including profit-sharing) arrangements entered into by any Loan Party or a Subsidiary with its respective current or former officers, directors, members of management, employees, consultants or independent contractors in the ordinary course of business, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, employees, consultants or independent contractors and (iii) transactions pursuant to any employee compensation arrangement, benefit plan, stock option plan or arrangement or any health, disability or similar insurance plan which covers current or former officers, directors, members of management, employees, consultants or independent contractors or any employment contract or arrangement;

(d) (i) transactions permitted by Sections 6.01(d), (o), (x), and (z), 6.03(h), (m), (t), (u), (v), and (w), and 6.04 and (ii) issuances of Capital Stock and debt securities not restricted by this Agreement;

(e) transactions in existence on the Third Amendment Effective Date and described on Schedule 6.10 and any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect;

(f) (i) so long as no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) then exists or would result therefrom, transactions pursuant to the Management Agreement (as in effect on the date hereof and as amended, restated, amended and restated, supplemented, modified or replaced so long as the amount of the fees, payments or other compensation required thereunder are not increased); it being understood that the Management Agreement shall permit the payment of management, monitoring, consulting, transaction, advisory and similar fees to the parties thereto so long as such fees do not exceed $1,000,000 in the aggregate in any Fiscal Year; provided to the extent that the amount of any such management, monitoring, consulting, transaction, advisory or similar fees paid in a Fiscal Year commencing with the Fiscal Year ending December 31, 2017 is less than $1,000,000, the excess of $1,000,000 over such paid amount may be carried forward and applied in any subsequent Fiscal Year to pay any such fees that were validly earned and unpaid in such subsequent Fiscal Year (in addition to the amount of such fees otherwise permitted to be paid by this clause (f)), so long as no such Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) then exists or would result therefrom and (ii) the payment of all indemnities and expenses owed to the parties thereto and its directors, officers, members of management, employees and consultants, in each case whether currently due or paid in respect of accruals from prior periods;

(g) the Transactions, including the payment of Transaction Costs, and the Transactions (Third Amendment), including the payment of Transaction Costs (Third Amendment);

(h) customary compensation to Affiliates in connection with any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities and other transaction fees, which payments are approved by the majority of the members of the board of directors (or similar governing body) or a majority of the disinterested members of the board of directors

(or similar governing body) of the applicable Loan Party in good faith, such payments in connection with any specified transaction not to exceed 1.5% of the transaction value of such transaction;

(i) Guarantees permitted by Section 6.01;

(j) loans and other transactions by the Loan Parties to the extent permitted under this Article 6;

(k) the payment of customary fees, reasonable out-of-pocket costs to and indemnities provided on behalf of members of the board of directors (or similar governing body), officers, employees, members of management, consultants and independent contractors of the Combined Group in the ordinary course of business and, in the case of payments to such Person in such capacity on behalf of any Parent Company, to the extent attributable to the operations of the Combined Group;

(l) transactions with customers, clients, suppliers or joint ventures for the purchase or sale of goods and services entered into in the ordinary course of business, which are fair to the affected Loan Party and/or its applicable Subsidiary in the reasonable determination of the board of directors (or similar governing body) of such Loan Party or the senior management thereof and are on terms at least as favorable as might reasonably have been obtained at such time by an unaffiliated third party;

(m) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement; and

(n) any purchase by Holdings of the Capital Stock of (or contribution to the equity capital of) any Borrower.

Section 6.11. Conduct of Business. From and after the Closing Date, the Loan Parties shall not, nor shall they permit any of their Subsidiaries to, engage in any material line of business other than (a) the businesses engaged in by the Combined Group on the Closing Date and similar, complementary, ancillary or related businesses and (b) such other lines of business as may be consented to by the Required Lenders.

Section 6.12. Amendments or Waivers of Organizational Documents. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, amend or modify, in each case in a manner that is materially adverse to the Lenders (in their capacities as such) such Person's Organizational Documents without obtaining the prior written consent of the Administrative Agent.

Section 6.13. Amendments of or Waivers with Respect to Restricted Debt. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, amend or otherwise change the terms of any Restricted Debt (or the documentation governing the foregoing) if the effect of such amendment or change, together with all other amendments or changes made, is materially adverse to the interests of the Lenders (in their capacities as such); provided that, for purposes of clarity, it is understood and agreed that the foregoing limitation shall not otherwise prohibit Refinancing Indebtedness or any other replacement, refinancing, amendment, supplement, modification, extension, renewal, restatement, or funding, in each case permitted under Section 6.01 in respect thereof.

Section 6.14. Fiscal Year. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, change their Fiscal Year-end to a date other than December 31.

Section 6.15. Permitted Activities of Holding Companies. Notwithstanding any transaction permitted by the other provisions of this Article VI, neither Holdings nor Osmotica Cyprus (each, a "**Holding Company**") shall:

(a) incur any Indebtedness for borrowed money other than (i) the Indebtedness under the Loan Documents or otherwise in connection with the Transactions, (ii) Guarantees of Indebtedness of the Subsidiaries permitted hereunder and (iii) intercompany loans permitted by Section 6.03;

(b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (i) the Liens created under the Collateral Documents to which it is a party, (ii) any other Lien created in connection with the Transactions, (iii) Permitted Liens on the Collateral that are secured on a pari passu or junior basis with the Secured Obligations, so long as such Permitted Liens secure Guarantees permitted under clause (a)(ii) above and the underlying Indebtedness subject to such Guarantee is permitted to be secured on the same basis pursuant to Section 6.02 and (iv) non-consensual Liens of the type permitted under Section 6.02 other than in respect of debt for borrowed money;

(c) engage in any business activity or own any material assets other than (i) (A) with respect to Holdings, holding the Capital Stock of Osmotica Cyprus and the Borrowers and, indirectly, any subsidiaries of Osmotica Cyprus and the Borrowers and (B) with respect to Osmotica Cyprus, holding the Capital Stock of Hungarian Holdings and Osmotica BVI and, indirectly, any other subsidiary of Hungarian Holdings or Osmotica BVI; (ii) performing its obligations under the Loan Documents and other Indebtedness, Liens (including the granting of Liens) and Guarantees permitted hereunder; (iii) issuing its own Capital Stock (including, for the avoidance of doubt, the making of any dividend or distribution on account of, or any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of, any shares of any class of Capital Stock); (iv) filing Tax reports and paying Taxes and other customary obligations in the ordinary course (and contesting any Taxes); (v) preparing reports to Governmental Authorities and to its shareholders; (vi) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable Requirements of Law; (vii) effecting any initial public offering of its Capital Stock; (viii) holding Cash and other assets received in connection with Restricted Payments received from or Investments made by any member of the Combined Group or contributions to the capital of, or proceeds from the issuance of its Capital Stock pending the application thereof; (ix) providing indemnification for its officers, directors, members of management, employees and advisors or consultants; (x) participating in tax, accounting and other administrative matters; (xi) the performance of its obligations under the Acquisition Agreement and the other documents, agreements and Investments contemplated by the Transactions or otherwise not prohibited under this Agreement; (xii) complying with applicable Requirements of Law (including with respect to the maintenance of its existence), (xiii) owning, licensing, transferring or assigning IP Rights in each case among members of the Combined Group, (xiv) intercompany loans permitted by Section 6.03 and (xv) activities incidental to any of the foregoing; or

(d) consolidate or amalgamate with, or merge with or into, or convey, sell or otherwise transfer all or substantially all its assets to, any Person; provided that, (I) so long as no Default or Event of Default exists or would result therefrom, (A) any Holding Company may consolidate or amalgamate with, or merge with or into, any other Person (other than a Borrower and any of its subsidiaries) so long as (i) such Holding Company shall be the continuing or surviving Person, (ii) in the case of Osmotica Cyprus, such merger, consolidation or amalgamation is a merger, consolidation or amalgamation with and into Hungarian Holdings, with Hungarian Holdings as the surviving Person or

(iii) if the Person formed by or surviving any such consolidation, amalgamation or merger is not such Holding Company (w) the successor Person shall expressly assume all the obligations of such Holding Company under this Agreement and the other Loan Documents to which such Holding Company is a party pursuant to a supplement hereto and/or thereto in a form reasonably satisfactory to the Administrative Agent, (x) the successor Person shall be an entity organized or existing under the laws of the United States, any State thereof or the District of Columbia or, in the case of Osmotica Cyprus, Cyprus, (y) (1) if Holdings is the Holding Company which is a party to such merger, consolidation or amalgamation, the successor Person shall, immediately following such merger, consolidation or amalgamation, directly own the Borrowers and indirectly own all other subsidiaries owned by Holdings immediately prior to such merger and (2) if Osmotica Cyprus is the Holding Company which is a party to such merger, consolidation or amalgamation, the successor Person shall, immediately following such merger, consolidation or amalgamation, directly own Hungarian Holdings and Osmotica BVI and indirectly own all other subsidiaries owned by Osmotica Cyprus immediately prior to such merger and (z) the Borrower Representative shall deliver a certificate of a Responsible Officer with respect to the satisfaction of the conditions under clauses (w), (x) and (y) hereof and (B) such Holding Company may convey, sell or otherwise transfer all or substantially all of its assets to any other Person (other than any Borrower and any of its subsidiaries) so long as (x) no Change of Control shall result therefrom, (y) the Person acquiring such assets either (i) is a Loan Party or (ii) shall expressly assume all of the obligations of such Holding Company under this Agreement and the other Loan Documents to which such Holding Company is a party pursuant to a supplement hereto and/or thereto in a form reasonably satisfactory to the Administrative Agent and (z) the Borrower Representative shall deliver a certificate of a Responsible Officer with respect to the satisfaction of the conditions under clauses (B)(x) and (B)(y) hereof and (II) such consolidation, amalgamation, merger, convergence or sale does not adversely affect the value of the Loan Guaranty or Collateral (or the perfection of the Administrative Agent's Liens with respect to any of the Collateral) provided under the Loan Documents to secure the Secured Obligations; provided, further, that if the conditions set forth in the preceding proviso are satisfied, the successor to such Holding Company will become a Loan Guarantor and, if such Person is not already a Loan Party, succeed to, and be substituted for, such Holding Company under this Agreement.

Section 6.16. Financial Covenants.

(a) (i) Total Leverage Ratio. Commencing with the Fiscal Quarter ending March 31, 2018, on the last day of any Test Period the Borrowers shall not permit the Total Leverage Ratio to be greater than the ratio set forth below opposite the last day of such Test Period:

Last day of Test Period	**Total Leverage Ratio**
March 31, 2018	4.75:1.00
June 30, 2018	4.75:1.00
September 30, 2018	4.75:1.00
December 31, 2018	4.75:1.00
March 31, 2019	4.75:1.00
June 30, 2019	4.75:1.00

Last day of Test Period	Total Leverage Ratio
September 30, 2019	4.75:1.00
December 31, 2019	4.75:1.00
March 31, 2020 and thereafter	4.50:1.00

(ii) Consolidated Fixed Charge Coverage Ratio. Commencing with the Fiscal Quarter ending March 31, 2018, on the last day of any Test Period, the Borrowers shall not permit the Consolidated Fixed Charge Coverage Ratio as of the last day of such Test Period to be less than 1.25:1.00.

(b) Equity Cure. Notwithstanding anything to the contrary in this Agreement (including Article 7), upon an Event of Default as a result of the Borrowers' failure to comply with Section 6.16(a) above, Holdings shall have the right (the "**Cure Right**") (at any time during the final Fiscal Quarter of the applicable Test Period or on or after the last day of such Fiscal Quarter until the date that is 10 Business Days after the date that financial statements for such Fiscal Quarter are required to be delivered pursuant to Section 5.01(a) or (b)) to issue Capital Stock (which shall be common equity, Qualified Capital Stock or other Capital Stock (such other Capital Stock to be on terms reasonably acceptable to the Administrative Agent)) for Cash or otherwise receive Cash contributions in respect of such Capital Stock (the "**Cure Amount**"), and thereupon, subject to the prior application of Cash in an amount equal to the Cure Amount to the prepayments required by Section 2.10(b)(iv), the Borrowers' compliance with Section 6.16(a) shall be recalculated giving effect to the following pro forma adjustment: Consolidated Adjusted EBITDA shall be increased (notwithstanding the absence of an addback in the definition of "Consolidated Adjusted EBITDA"), solely for the purposes of determining compliance with Section 6.16(a) hereof, including determining compliance with Section 6.16(a) hereof as of the end of such Fiscal Quarter and applicable subsequent periods that include such Fiscal Quarter, by an amount equal to the Cure Amount. If, after giving effect to the foregoing recalculations ~~(but not, for the avoidance of doubt, taking into account any reduction of Indebtedness in connection therewith),~~, the requirements of Section 6.16(a) shall be satisfied, then the requirements of Section 6.16(a) shall be deemed satisfied as of the end of the relevant Fiscal Quarter with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 6.16(a) that had occurred shall be deemed cured for the purposes of this Agreement. Notwithstanding anything herein to the contrary, (i) ~~in each four consecutive Fiscal Quarter period of the Borrowers there shall be at least two Fiscal Quarters with respect to which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times, (iii)~~ the Cure Amount shall be no greater than the amount required for purposes of complying with Section 6.16(a), (~~iv~~ii) upon the Administrative Agent's receipt of a written notice from the Borrower Representative that the Borrowers intend to exercise the Cure Right (a "**Notice of Intent to Cure**"), until the 10th Business Day following the date that financial statements for the Fiscal Quarter to which such Notice of Intent to Cure relates are required to be delivered pursuant to Section 5.01(a) or (b), neither the Administrative Agent (or any sub agent therefore) nor any Lender shall exercise the right to accelerate the Loans or terminate the Revolving Credit Commitments or any Additional Commitments, and none of the Administrative Agent (or any sub-agent therefor) nor any other Lender or any Secured Party shall exercise any right to foreclose on or take possession of the Collateral or any other right or remedy under the Loan Documents solely on the basis of such Event of Default having occurred and being continuing under Section 6.16(a), (~~v~~iii) during any Test Period in which the Cure Amount is included in the calculation of Consolidated Adjusted EBITDA pursuant to any exercise of the Cure Right, such Cure Amount shall be counted ~~solely~~ as an increase to

Consolidated Adjusted EBITDA ~~(and not as a reduction to Indebtedness (directly through repayment or indirectly through netting))~~ for the purpose of determining the Borrowers' compliance with Section 6.16(a) and shall be disregarded for any other purpose, including for purposes of determining the satisfaction of any financial ratio-based condition, pricing or the availability of any basket under Article 6 of this Agreement, (iv) there shall be no pro forma or other reduction of the amount of any Indebtedness by the amount of any Cure Amount for purposes of determining compliance with Section 6.16(a) for the Fiscal Quarter in respect of which the Cure Right was exercised (other than, with respect to any future period, to the extent of any portion of such Cure Amount that is actually applied to repay Indebtedness) and (~~vi~~v) no Revolving Lender, Swingline Lender or Issuing Bank shall be required to make any Revolving Loan or Swingline Loan or issue any Letter of Credit hereunder, if an Event of Default under the covenant set forth in Section 6.16(a) has occurred and is continuing, during the 10 Business Day period during which Holdings may exercise a Cure Right, unless and until the Cure Amount is actually received.

Section 6.17. Derivative Transactions. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, enter into any Derivative Transactions other than Derivative Transactions entered into in the ordinary course of business and not for speculative purposes.

Section 6.18. Acquisition Agreement. None of the Loan Parties shall, nor shall they permit any of their Subsidiaries to, amend or modify, in each case in a manner that is materially adverse to the Lenders (in their capacities as such) the Acquisition Agreement without obtaining the prior written consent of the Administrative Agent.

ARTICLE 7 EVENTS OF DEFAULT

Section 7.01. Events of Default. If any of the following events (each, an "**Event of Default**") shall occur:

(a) Failure To Make Payments When Due. Failure by any Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder or under any other Loan Document within five Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Loan Party or any of the other Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in clause (a) above) with an aggregate outstanding principal amount exceeding the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Loan Party or any of the other Subsidiaries with respect to any other term of (A) one or more items of Indebtedness (other than the Obligations) with an aggregate outstanding principal amount exceeding the Threshold Amount or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided, that clause (ii) of this clause (b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder; or

(c) Breach of Certain Covenants. (i) Failure of any Borrower or any Loan Party, as required by the relevant provision, to perform or comply with any term or condition contained in Section 5.01(e)(i), Section 5.02 (as it applies to the preservation of the existence of any Borrower), Section 5.11 or Article 6; or (ii) any default with respect to any term or condition contained in Section 5.01(a) or (b), and in the case of this clause (ii), such default shall not have been remedied or waived within 15 days after receipt by the Borrower Representative of written notice from the Administrative Agent of such default; or

(d) Breach of Representations, Etc. Any representation, warranty or certification made or deemed made by any Loan Party in any Loan Document or in any certificate required to be delivered in connection herewith or therewith shall be untrue in any material respect as of the date made or deemed made; provided, however that with respect to any Specified Acquisition Agreement Representation, only if such Specified Acquisition Agreement Representation shall be untrue in any material respect on any day occurring more than 30 days after the Closing Date; or

(e) Other Defaults Under Loan Documents. Any Loan Party shall default in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Article 7, and such default shall not have been remedied or waived within 30 days after receipt by the Borrower Representative of written notice from the Administrative Agent of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Loan Party or any of its Subsidiaries (other than an Immaterial Subsidiary) in an involuntary case under any Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal, state or local law; or (ii) an involuntary case shall be commenced against any Loan Party or any of their respective Subsidiaries (other than an Immaterial Subsidiary) under any Debtor Relief Law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, receiver and manager, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Loan Party or any of its Subsidiaries other than Immaterial Subsidiaries, or over all or a substantial part of any such Loan Party's or any of its Subsidiaries' property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Loan Party or any of its Subsidiaries (other than its Immaterial Subsidiaries) for all or a substantial part of its property; and any such event described in this clause (ii) shall continue for 60 consecutive days without having been dismissed, vacated, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Any Loan Party or any of its Subsidiaries (other than any Immaterial Subsidiary) shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, receiver and manager, trustee or other custodian for all or a substantial part of such Loan Party's or any of its Subsidiaries' property; or (ii) any Loan Party or any of its Subsidiaries (other than any Immaterial Subsidiary) shall make a general assignment for the benefit of creditors; or (iii) any Loan Party or any of its Subsidiaries (other than any Immaterial Subsidiary) shall admit in writing its inability to pay its debts as such debts become due; or

(h) Judgments and Attachments. Any one or more final money judgments, writs or warrants of attachment or similar process involving in the aggregate at any time an amount in excess of

the Threshold Amount (in either case to the extent not adequately covered by self-insurance with appropriate reserves (if applicable) or by insurance as to which a reputable third party insurance company has been notified and not denied coverage) shall be entered or filed against any Loan Party or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed pending appeal for a period of 60 days; or

(i) Employee Benefit Plans. There shall occur one or more ERISA Events which individually or in the aggregate result in liability of any Loan Party or any of its Subsidiaries in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) Change of Control. A Change of Control shall occur; or

(k) Guaranties, Collateral Documents and Other Loan Documents. At any time after the execution and delivery thereof, (i) any material Loan Guaranty for any reason, other than the occurrence of the Termination Date, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Loan Guarantor shall repudiate in writing its obligations thereunder (other than as a result of the discharge of such Loan Guarantor in accordance with the terms thereof), (ii) this Agreement or any material Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the occurrence of the Termination Date or any other termination of such Collateral Document in accordance with the terms thereof) or shall be declared null and void, (iii) the Administrative Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by and subject to such limitations and restrictions as are set forth by the relevant Collateral Document (except to the extent (x) any such loss of perfection or priority results from the failure of the Administrative Agent or any Secured Party to take any action within its control (unless such failure results from the breach or non-compliance by any Loan Party with the terms of the Loan Documents), (y) such loss is covered by a lender's title insurance policy as to which the insurer has been notified of such loss and does not deny coverage and the Administrative Agent shall be reasonably satisfied with the credit of such insurer or (z) such loss of perfected security interest may be remedied by the filing of appropriate documentation without the loss of priority) or (iv) any Loan Party shall contest the validity or enforceability of any material provision of any Loan Document in writing or deny in writing that it has any further liability (other than by reason of the occurrence of the Termination Date), including with respect to future advances by the Lenders, under any Loan Document to which it is a party; or

(l) Subordination. The Obligations shall cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing any permitted Subordinated Indebtedness, in excess of the Threshold Amount or such subordination provision shall be invalidated or otherwise cease, for any reason, to be valid, binding and enforceable obligations of the parties thereto;

then, and in every such event (other than an event with respect to any Borrower described in clause (f) or (g) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Representative, take any of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments or any Additional Commitments, and thereupon such Commitments and/or Additional Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers

accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers and (iii) require that the Borrowers deposit in the LC Collateral Account an additional amount in Cash as reasonably requested by the Issuing Banks (not to exceed 103% of the relevant face amount) of the then outstanding LC Exposure; provided that upon the occurrence of an event with respect to any Borrower described in clause (f) or (g) of this Article, any such Commitments and/or Additional Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and the obligation of the Borrowers to Cash collateralize the outstanding Letters of Credit as aforesaid shall automatically become effective, in each case without further action of the Administrative Agent or any Lender. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE 8 THE ADMINISTRATIVE AGENT

Each of the Lenders, the Swingline Lender and the Issuing Banks hereby irrevocably appoints CIT (or any successor appointed pursuant hereto) as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 8 (other than the fifteenth, sixteenth and nineteenth paragraphs hereof) are solely for the benefit of the Administrative Agent, the Swingline Lender, the Lenders and the Issuing Banks, and the Borrowers shall not have rights as a third party beneficiary of any such provision. Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith and each Issuing Bank shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Article 8 with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in this Article 8 included such Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the Issuing Bank.

Any Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, unless the context otherwise requires or unless such Person is in fact not a Lender, include each Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any subsidiary of a Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent shall not be under any obligation to provide such information to them.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent

shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law and 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, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable laws, and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by the Borrower Representative or any Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into, and each Loan Party and Secured Party hereby waives and agrees not to assert any right, claim or cause of action based on, except to the extent of liabilities resulting primarily from Administrative Agent's own gross negligence or willful misconduct in connection with its duties expressly set forth herein: (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence, value, sufficiency, state or condition of the Collateral, (vi) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, (vii) the properties, books or records of any Loan Party or any Affiliate thereof and (viii) liability with respect to or arising out of any assignment or participation of the Obligations, or disclosure of any information, to any Secured Party or any Security Party's representatives, Approved Funds or Affiliates. In addition to and not in limitation of the foregoing, it is understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given the Administrative Agent's own interest in the Collateral in its capacity as one of the Secured Parties and that the Administrative Agent shall have no other duty or liability whatsoever to any Secured Party as to any of the foregoing, including the preparation, form or filing of any UCC financing statement (or any similar filing in any applicable jurisdiction), amendment or continuation or of any other type of document related to the creation, perfection, continuation or priority of any Lien as to any property of the Loan Parties.

Each Lender agrees that, except with the written consent of the Administrative Agent, it will not take any enforcement action hereunder or under any other Loan Document, accelerate the Obligations under any Loan Document, or exercise any right that it might otherwise have under applicable law or otherwise to credit bid at foreclosure sales, UCC sales, any sale under Section 363 of the Bankruptcy Code or other similar Dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of the Obligations held by such Lender, including the filing of proofs of claim in a case under the Bankruptcy Code.

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the Borrowers, the Administrative Agent and each Secured Party agrees that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Loan Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the other Loan Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or in the event of any other Disposition (including pursuant to Section 363 of the Bankruptcy Code), (A) the Administrative Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such Disposition and (B) the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such Disposition.

No holder of Secured Hedging Obligations or Banking Services Obligations shall have any rights in connection with the management or release of any Collateral or of the obligations of any Loan Guarantor under this Agreement.

Each of the Lenders hereby irrevocably authorizes (and by entering into a Hedge Agreement with respect to Secured Hedging Obligations and/or by entering into documentation in connection with Banking Services Obligations, each of the other Secured Parties hereby authorizes and shall be deemed to authorize) the Administrative Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders (or other requisite Lenders):

(a) consent to the Disposition of all or any portion of the Collateral free and clear of the Liens securing the Secured Obligations in connection with any such sale or other transfer pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;

(b) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;

(c) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;

(d) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other Disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; and/or

(e) estimate the amount of any contingent or unliquidated Secured Obligations of such Lender or other Secured Party;

it being understood that no Lender shall be required to fund any amounts in connection with any purchase of all or any portion of the Collateral by the Administrative Agent pursuant to the foregoing clauses (b), (c) or (d) without its prior written consent. In connection with any bid described in the foregoing clauses (a) through (d), Administrative Agent shall be authorized (i) to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained Section 9.02(b) (provided that, in any event, the consent of each Lender shall be required for any term that would treat or attempts to treat a Lender or a class of Lenders in a manner different than all other Lenders)), and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Each Lender and other Secured Party agrees that the Administrative Agent is under no obligation to credit bid any part of the Secured Obligations or to purchase or retain or acquire any portion of the Collateral; provided that, in connection with any credit bid or purchase under clause (b), (c) or (d) of the preceding paragraph, the Secured Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) shall be entitled to be, and shall be, credit bid by the Administrative Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is a Secured Obligation, the Administrative Agent is hereby authorized, but is not required, to estimate the amount of any such claim for purposes of the credit bid or purchase so long as the fixing or liquidation of such claim would not unduly delay the ability of the Administrative Agent to credit bid the Secured Obligations or purchase the Collateral at such Disposition. In the event that the Administrative Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid or purchase in accordance with the second preceding paragraph, then those of the contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Secured Obligations are credit bid under clauses (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or other asset or assets acquired in connection with such credit bid (or in the Capital Stock of the acquisition vehicle or vehicles

that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Secured Obligations of such Secured Party that were credit bid in such credit bid or other Disposition, by (y) the aggregate amount of all Secured Obligations that were credit bid in such credit bid or other Disposition.

In addition, in case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, each Secured Party agrees that the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans or LC Exposure 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, the Swingline Lender, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Swingline Lender, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts to the extent due to the Lenders and the Administrative Agent under Sections 2.11 and 9.03) allowed in such judicial proceeding;

(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, the Swingline Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the Swingline Lender and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amount to the extent due to the Administrative Agent under Sections 2.11 and 9.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender, the Swingline Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender, the Swingline Lender or any Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender, the Swingline Lender or any Issuing Bank in any such proceeding.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Swingline Lender or the applicable Issuing Bank, the Administrative Agent and may presume that such condition is satisfactory to such Lender, the Swingline Lender or such Issuing Bank unless the Administrative Agent or shall have

received notice to the contrary from such Lender, the Swingline Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent, the Swingline Lender and the Issuing Bank may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more attorneys-in-fact or sub-agents appointed by the Administrative Agent. The Administrative Agent and any such attorney-in-fact or sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such attorney-in-fact or sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any such attorney-in-fact or sub-agent that it so appoints in the absence of the Administrative Agent's gross negligence or willful misconduct (as finally determined in a non-appealable decision of a court of competent jurisdiction).

The Administrative Agent may resign at any time by giving ten days written notice to the Lenders, the Swingline Lender, the Issuing Banks and the Borrower Representative. If the Administrative Agent is a Defaulting Lender or an Affiliate of a Defaulting Lender, the Borrower Representative may, upon ten days' notice, remove the Administrative Agent. Upon receipt of any such notice of resignation or removal notices, the Required Lenders shall have the right, with the consent of the Borrower Representative (not to be unreasonably withheld or delayed), to appoint a successor Administrative Agent which shall be a commercial bank with an office in the United States having combined capital and surplus in excess of $1,000,000,000; provided that during the existence and continuation of an Event of Default under Section 7.01(a) or, with respect to the Borrowers, Section 7.01(f) or (g), no consent of the Borrower Representative shall be required; provided, further, that in no event shall a Disqualified Institution be the successor Administrative Agent. If no successor shall have been so appointed as provided above and shall have accepted such appointment within 10 days after the retiring Administrative Agent gives notice of its resignation, then (a) in the case of a retirement, the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, the Swingline Lender and the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications (including, for the avoidance of doubt, the Borrower Representative consent, if required) set forth above or (b) in the case of a removal, the Borrower Representative may, after consulting with the Required Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that (x) in the case of a retirement, if such Administrative Agent shall notify the Borrower Representative, the Lenders, the Swingline Lender and the Issuing Banks that no qualifying Person has accepted such appointment or (y) in the case of a removal, the Borrower Representative notifies the Required Lenders that no qualifying Person has accepted such appointment, then, in each case, such resignation or removal shall nonetheless become effective in accordance with such notice and (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender, the Swingline Lender and each Issuing Bank directly (and each Lender, the Swingline Lender and each Issuing Bank will cooperate with the Borrower Representative to enable the Borrower Representative to take such actions), until such time as the Required Lenders or the Borrower Representative, as applicable, appoint a successor Administrative Agent, as provided for above in this Article 8. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights,-

powers, privileges and duties of the retiring Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower Representative and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Notwithstanding anything to the contrary contained herein, CIT may, upon ten days' prior written notice to the Borrower Representative, each other Issuing Bank and the Lenders, resign as Issuing Bank and/or the Swingline Lender, which resignation shall be effective as of the date referenced in such notice (but in no event less than ten days after the delivery of such written notice); it being understood that in the event of any such resignation, any Letters of Credit then outstanding shall remain outstanding (irrespective of whether any amounts have been drawn at such time). In the event of any such resignation as Issuing Bank or Swingline Lender, the Borrower Representative shall be entitled to appoint from among the Lenders willing to accept such appointment a successor Issuing Bank or Swingline Lender hereunder. Upon the acceptance of any appointment as Issuing Bank or Swingline Lender hereunder by a successor Issuing Bank or Swingline Lender, as applicable, that successor Issuing Bank or Swingline Lender, as applicable, shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Issuing Bank or Swingline Lender, as applicable, and the retiring Issuing Bank or Swingline Lender, as applicable, shall be discharged from its duties and obligations hereunder. In the event the successor Swingline Lender resigns, the applicable Borrowers shall promptly repay all outstanding Swingline Loans on the effective date of such resignation (which repayment may be effectuated with the proceeds of a Borrowing). Notwithstanding anything to the contrary contained herein, any resignation or removal of the Administrative Agent pursuant to the preceding paragraph shall constitute a simultaneous resignation as Swingline Lender and an Issuing Bank, which resignation shall occur automatically and without further action.

Each Lender, the Swingline Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon either Administrative Agent or any other Lender or any of their Related Parties 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 banking laws or other Requirements of Law relating to the transactions contemplated hereby, and made its own credit analysis and decision to enter into this Agreement. Each Lender, the Swingline Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders, the Swingline Lender and the Issuing Banks by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Lender, the Swingline Lender or any Issuing Bank 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 the Administrative Agent or any of its Related Parties.

Anything herein to the contrary notwithstanding, the Arrangers shall not have any right, power, obligation, liability, responsibility or duty under this Agreement, except in their respective capacities, as applicable, as the Administrative Agent, an Issuing Bank or a Lender hereunder.

Each of the Lenders, the Swingline Lender and each of the Issuing Banks irrevocably authorize and instruct the Administrative Agent to, and the Administrative Agent shall,

(a) release any Lien on any property granted to or held by Administrative Agent under any Loan Document (i) upon the occurrence of the Termination Date, (ii) that is sold or to be sold or transferred as part of or in connection with any Disposition permitted under the Loan Documents to a Person that is not a Loan Party, (iii) that does not constitute (or ceases to constitute) Collateral, (iv) if the property subject to such Lien is owned by a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Loan Guaranty otherwise in accordance with the Loan Documents, or (v) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.02, and in connection with any of the foregoing events, to execute such payoff letters and related documentation in form and substance satisfactory to Administrative Agent, in its sole discretion;

(b) release any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Person ceases to be a Subsidiary (or becomes an Excluded Subsidiary) as a result of a single transaction or related series of transactions permitted hereunder; and

(c) at the request of the Borrower Representative, subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(m), Section 6.02(n), Section 6.02(o) and, solely to the extent such Liens do not secure any Indebtedness for borrowed money, Section 6.02(u).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Guarantor from its obligations under the Loan Guaranty pursuant to this Article 8 and Section 10.12 hereunder. In each case as specified in this Article 8, each Agent will (and each Lender, the Swingline Lender and each Issuing Bank hereby authorizes the Administrative Agent to), at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Loan Guarantor from its obligations under the Loan Guaranty, in each case in accordance with the terms of the Loan Documents and this Article 8.

The Administrative Agent is authorized to enter into any intercreditor agreement contemplated hereby with respect to Indebtedness that is (i) required or permitted to be subordinated hereunder and/or (ii) secured by Liens and which Indebtedness contemplates an intercreditor, subordination or collateral trust agreement (any such other intercreditor agreement, an "**Additional Agreement**"), and the parties hereto acknowledge that any Additional Agreement is binding upon them. Each Lender, the Swingline Lender and each Issuing Bank (a) hereby consents to the subordination of the Liens on the Collateral securing the Secured Obligations on the terms set forth in any Additional Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of any Additional Agreement and (c) hereby authorizes and instructs the Administrative Agent to enter into any Additional Agreement and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof. The

foregoing provisions are intended as an inducement to the Secured Parties to extend credit to the Borrowers and such Secured Parties are intended third-party beneficiaries of such provisions and the provisions of any Additional Agreement.

To the extent the Administrative Agent, the Swingline Lender or any Issuing Bank (or in each case any affiliate thereof) is not reimbursed and indemnified by the Borrowers, the Lenders will reimburse and indemnify the Administrative Agent, the Swingline Lender and such Issuing Bank (and in each case any affiliate thereof) in proportion to their respective Applicable Percentage for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent (or any affiliate thereof) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's, the Swingline Lender's or the Issuing Banks' (or each such affiliate's) gross negligence, bad faith or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision); provided, further, that no action taken in furtherance of the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this paragraph.

ARTICLE 9 MISCELLANEOUS

Section 9.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email, as follows:

(i) if to any Loan Party, to the Borrower Representative at:

Osmotica Holdings US LLC
2400 Main Street, Suite 6
Sayreville, NJ 08872
Attn: Chris Klein
Tel.: (732) 721-0070
Fax: (732) 721-3430
Email: cklein@Verticalpharma.com

with copy to (which shall not constitute notice to any Loan Party):

Avista Capital Partners, LP
65 East 55th Street, 18th Floor
New York, NY 10022
Attention: Sriram Venkataraman
Tel.: (212) 593-6900
Fax: (212) 593-6939
Email: venkataraman@avistacap.com

Altchem Limited

Καραϊσκάκη, 6
CITY HOUSE
3032, Λεμεσός, Κύπρος
Attn: Andreas Yiouselli
Tel: +54 (11) 4379-4179
Fax: +357 22 555004

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attn: Sunil Savkar
Tel.: (212) 841 5762
Fax: (212) 596 9090
Email: Sunil.Savkar@ropesgray.com

if to the Administrative Agent, at:

CIT Bank, N.A.
11 West 42 Street
New York, NY 10036
Attn: Patricia Estevez
Tel: (212) 461-7818
Email: Patricia.Estevez@cit.com

with copy (which shall not constitute notice) to:

Sidley Austin LLP
787 Seventh Ave
New York, NY 10019
Attn: Ram Burshtine
Tel.: (212) 839-5778
Fax: (212) 839-5400
Email: rburshtine@sidley.com

(ii) if to any other Lender, to it at its address, email address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or three Business Days after dispatch if sent by certified or registered mail, in each case, delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01 or (B) sent by facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone; provided that received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or Intranet websites) pursuant to procedures set forth herein or otherwise approved by the Administrative Agent. The Administrative Agent or the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures set forth herein or otherwise approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or Intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02. Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, the Swingline Lender, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Swingline Lender, the Issuing Banks and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, to the extent permitted by law, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, the Swingline Lender, any Lender or any Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) Subject to clauses (A), (B) and Sections 9.02(c) and (d) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified, except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) or (ii) in the case of any other Loan Document (other than any such waiver, amendment or modification to effectuate any modification thereto expressly contemplated by the terms of such other Loan Documents), pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that, notwithstanding the foregoing:

(A) solely with the consent of each Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required Lenders), any such agreement may;

(1) increase the Commitment or Additional Commitment of such Lender (other than with respect to any Incremental Revolving Commitment Increase pursuant to Section 2.21 in respect of which such Lender has agreed to be an Additional Lender); it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments or Additional Commitments shall constitute an increase of any Commitment or Additional Commitment of such Lender;

(2) reduce or forgive the principal amount of any Loan or any amount due on any Loan Installment Date;

(3) (x) extend the scheduled final maturity of any Loan or (y) postpone any Loan Installment Date, any Interest Payment Date or the date of any scheduled payment of interest or fees payable hereunder (in each case, other than extension for administrative reasons agreed by the Administrative Agent);

(4) reduce the rate of interest (other than to waive any obligations of the Borrowers to pay interest at the default rate of interest under Section 2.12(c)) or the amount of any fees owed to such Lender; it being understood that any change in the definition of "Total Leverage Ratio" or any other ratio used in the calculation of the Applicable Rate or the Commitment Fee Rate, or the calculation of any other interest or fees due hereunder (including any component definition thereof) shall not constitute a reduction in any rate of interest or fees hereunder; and

(5) extend the expiry date of such Lender's Commitment or Additional Commitments; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments or Additional Commitments shall constitute an extension of any Commitment or Additional Commitment of such Lender;

(B) without the written consent of each Lender, no such agreement shall:

(1) change any of the provisions of Section 9.02(a) or Section 9.02(b) or the definition of "Required Lenders" to reduce any of the voting percentages required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the prior written consent of each Lender (in the case of the definition of "Required Lenders");

(2) release all or substantially all of the Collateral from the Lien of the Loan Documents (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article 8), without the prior written consent of each Lender;

(3) release all or substantially all of the value of Guarantees under the Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article 8, Section 10.12), without the prior written consent of each Lender; and

(4) waive, amend or modify the provisions of the last sentence of Section 2.10(a)(i), Section 2.17(a) (as to pro rata sharing only), 2.17(b), 2.17(c) or 2.17(d) of this Agreement in a manner that would by its terms alter the *pro rata* sharing of payments required thereby (except in connection with transactions permitted under Sections 2.21, 2.22, 9.02(c) or 9.05(g) or as otherwise provided in this Section 9.02);

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, such Issuing Bank or the Swingline Lender, as the case may be. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.05, Commitment reductions or terminations pursuant to Section 2.08, the incurrence of Additional Commitments or Additional Loans pursuant to Sections 2.21, 2.22 or 9.02(c) and the reduction or termination of any such Additional Commitments or Additional Loans. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except amendments, waivers and consents requiring the consent of all Lenders or all affected Lenders pursuant to Section 9.02(b)(A) and (B) above. Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the relevant benefits of this Agreement and the other Loan Documents and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion.

(c) Notwithstanding the foregoing, this Agreement may be amended:

(i) with the written consent of the Borrowers and the Lenders providing the relevant Replacement Term Loans to permit the refinancing or replacement of all or any portion of the outstanding Term Loans or any then-existing Additional Term Loans under the applicable Class (such loans, the "**Replaced Term Loans**") with one or more replacement term loans hereunder ("**Replacement Term Loans**") pursuant to a Refinancing Amendment; provided that

(A) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Replaced Term Loans (*plus* the

amount of accrued interest and premium (including tender premium) thereon and underwriting discounts, fees (including upfront fees and OID), commissions and expenses associated therewith),

(B) such Replacement Term Loans shall not mature prior to the Latest Maturity Date then in effect at the time of such refinancing, and have a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, such Replaced Term Loans at the time of such refinancing,

(C) the Replacement Term Loans shall be *pari passu* right of payment and *pari passu* with respect to the Collateral with the remaining portion of the relevant Term Loans or Additional Term Loans (provided that such Replacement Term Loans shall be subject to a customary intercreditor agreement or an intercreditor agreement on terms reasonably satisfactory to the Administrative Agent and the Borrower (which may consist of a payment waterfall) and may be, at the option of the Administrative Agent and the Borrower Representative, documented in a separate agreement or agreements),

(D) no such Replacement Term Loans shall be secured by any assets other than the Collateral,

(E) no such Replacement Term Loans shall be guaranteed by any Person other than one or more Loan Parties,

(F) any Replacement Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments in respect of the Term Loans (and any other Additional Term Loans then subject to ratable repayment requirements), in each case as agreed by the Borrowers and the Lenders providing the relevant Replacement Term Loans,

(G) such Replacement Term Loans shall have pricing (including interest, fees and premiums) and, subject to preceding clause (F), optional prepayment and redemption terms as may be agreed to by the Borrowers and the lenders providing such Replacement Term Loans,

(H) no Event of Default shall exist immediately prior to or after giving effect to the effectiveness of such replacement, and

(I) the other terms and conditions of such Replacement Term Loans (excluding pricing, interest, fees, rate floors, premiums, optional prepayment or redemption terms, subject to those referenced in preceding clauses (B), (C), (D), (E), (F) and (G)) shall be substantially identical to, or (taken as a whole) no more favorable (as reasonably determined by the Administrative Agent and the Borrower Representative) to the lenders providing such Replacement Term Loans than those applicable to the Replaced Term Loans (other than any covenants or other provisions applicable only to periods after the Latest Term Loan Maturity Date (in each case, as of the date of incurrence of such Replacement Term Loans)) or such Replacement Term Loans shall be on then-current market terms for such type of Indebtedness, and

(ii) with the written consent of the Borrowers and the Lenders providing the relevant Replacement Revolving Facility to permit the refinancing or replacement of all or any portion of the Revolving Credit Commitment or any Additional Revolving Commitments under the applicable Class (a "**Replaced Revolving Facility**") with a replacement revolving facility hereunder (a "**Replacement Revolving Facility**") pursuant to a Refinancing Amendment; provided that:

(A) the aggregate principal amount of such Replacement Revolving Facility shall not exceed the aggregate principal amount of such Replaced Revolving Facility *plus* the amount of accrued interest and premium thereon, any committed but undrawn amounts and underwriting discounts, fees (including any upfront fees and OID), commissions and expenses associated therewith),

(B) no Replacement Revolving Facility shall have a final maturity date (or require commitment reductions) prior to the final maturity date of such Replaced Revolving Facility at the time of such refinancing,

(C) the Replacement Revolving Facility shall be *pari passu* and *pari passu* with respect to the Collateral with the remaining portion of the relevant Revolving Credit Commitments or Additional Revolving Commitments (provided that such Replacement Revolving Facility shall be subject to a customary intercreditor agreement or an intercreditor agreement on terms reasonably satisfactory to the Administrative Agent and the Borrower Representative (which may consist of a payment waterfall) and may be, at the option of the Administrative Agent and the Borrower Representative, documented in a separate agreement or agreements),

(D) no such Replacement Revolving Facility shall be secured by any assets other than the Collateral,

(E) no such Replacement Revolving Facility shall be guaranteed by any Person other than one or more Loan Parties,

(F) any such Replacement Revolving Facility shall be subject to the same "ratability" provisions applicable to Extended Revolving Credit Commitments and Extended Revolving Loans provided for in the proviso in clause (ii) of Section 2.22(a), *mutatis mutandis*, to the same extent as if fully set forth herein,

(G) such Replacement Revolving Facilities shall have pricing (including interest, fees and premiums) and, subject to preceding clause (F), optional prepayment and redemption terms as may be agreed to by the Borrowers and the lenders providing such Replacement Revolving Facilities,

(H) no Event of Default shall exist immediately prior to or after giving effect to the effectiveness of such replacement, and

(I) the other terms and conditions of such Replacement Revolving Facility (excluding pricing, interest, fees, rate floors, premiums, optional prepayment or redemption terms, subject to those referenced in preceding clauses (B), (C), (D), (E), (F) and (G)) shall be substantially identical to, or (taken as a whole) no more favorable (as reasonably determined by the Administrative Agent and the Borrower Representative) to

the lenders providing such Replacement Revolving Facility than those applicable to the Replaced Revolving Facility (other than any covenants or other provisions applicable only to periods after the Latest Revolving Loan Maturity Date (in each case, as of the date of incurrence of such Replacement Revolving Facility)) or such Replacement Revolving Facility shall be on then-current market terms for such type of Indebtedness, and the Replaced Revolving Facility commitments shall be terminated, and all fees in connection therewith shall be paid, on the date such Replacement Revolving Facility is issued, incurred or obtained,

provided, further, that, in respect of each of clauses (i) and (ii) above, any Non-Debt Fund Affiliate and Debt Fund Affiliate shall (x) be permitted (without Administrative Agent consent) to provide such Replacement Term Loans, it being understood that in connection with such Replacement Term Loans, any such Non-Debt Fund Affiliate or Debt Fund Affiliate, as applicable, shall be subject to the restrictions applicable to such Persons under Section 9.05 as if such Replacement Term Loans were Term Loans and (y) Debt Fund Affiliates (but not Non-Debt Fund Affiliates) may provide any Replacement Revolving Facility.

Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be amended by the Borrowers, the Administrative Agent and the lenders providing the relevant Replacement Term Loans or the Replacement Revolving Facility, as applicable, to the extent (but only to the extent) necessary to reflect the existence and terms of the Replacement Term Loans or the Replacement Revolving Facility, as applicable, incurred pursuant thereto (including any amendments necessary to treat the loans and commitments subject thereto as a separate "tranche" and "Class" of Loans and commitments hereunder). It is understood that any Lender approached to provide all or a portion of Replacement Term Loans or a Replacement Revolving Facility may elect or decline, in its sole discretion, to provide such Replacement Term Loans or Replacement Revolving Facility.

(d) Notwithstanding anything to the contrary contained in this Section 9.02 or any other provision of this Agreement or any other Loan Document, (i) guarantees, collateral security agreements, pledge agreements and related documents (if any) executed by the Loan Parties in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and the Borrower Representative and may be amended, supplemented and/or waived with the consent of the Administrative Agent at the request of the Borrower Representative without the input or need to obtain the consent of any other Lenders to (x) comply with local law or advice of local counsel or (y) to cause such guarantees, collateral security agreements, pledge agreement or other document to be consistent with this Agreement and the other Loan Documents, (ii) the Borrowers and the Administrative Agent may, without the input or consent of any other Lender (other than the relevant Lenders (including Additional Lenders) providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower Representative and the Administrative Agent to effect the provisions of Sections 2.21, 2.22, 5.12 or 9.02(c), or any other provision specifying that any waiver, amendment or modification may be made with the current or approval of the Administrative Agent, and (iii) if the Administrative Agent and the Borrower Representative have jointly identified any ambiguity, mistake, defect, inconsistency, obvious error or any error or omission of a technical nature or any necessary or desirable technical change, in each case, in any provision of any Loan Document, then the Administrative Agent and the Borrowers shall be permitted to amend such provision solely to address such matter as reasonably determined by them acting jointly.

Section 9.03. Expenses; Indemnity; Damage Waiver.

(a) The Borrowers shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Arranger, the Administrative Agent and their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such persons taken as a whole and, if necessary, of one local counsel in any relevant material jurisdiction to such Persons, taken as a whole) in connection with the syndication and distribution (including via the Internet or through a service such as Intralinks) of the Credit Facilities, the preparation, execution, delivery and administration of the Loan Documents and related documentation, including in connection with any amendments, modifications or waivers of the provisions of any Loan Documents (whether or not the transactions contemplated thereby shall be consummated, but only to the extent such amendments, modifications or waivers were requested by the Borrower Representative to be prepared) and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arrangers, the Swingline Lender, the Issuing Banks or the Lenders and each of their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such persons taken as a whole and, if necessary, of one local counsel in any relevant material jurisdiction to such persons, taken as a whole) in connection with the enforcement, collection or protection of each of their rights in connection with the Loan Documents, including each of their rights under this Section, or in connection with the Loans made and/or Letters of Credit issued hereunder. Other than to the extent required to be paid on the Closing Date, all amounts due under this paragraph (a) shall be payable by the Borrowers within 30 days of written demand therefor together with backup documentation supporting such reimbursement requests.

(b) The Borrowers shall indemnify each Arranger, the Syndication Agent, the Administrative Agent, the Swingline Lender, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional counsel to all affected Indemnitees, taken as a whole, and, if reasonably necessary, one local counsel in any relevant material jurisdiction to all Indemnitees, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each such relevant material jurisdiction to all affected Indemnitees, taken as a whole), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) the use of the proceeds of the Loans or any Letter of Credit (and any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by any Borrower, any other Loan Party or any of their respective Affiliates) or (iv) any actual or alleged presence or Release or threat of Release of Hazardous Materials on, at, to or from any Mortgaged Property or other property currently or formerly owned or operated by any Loan Party or any Subsidiary, or any Environmental Liability; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (i) are determined by a court of competent jurisdiction by final and

nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate of such Indemnitee or, to the extent such judgment finds such losses, claims, damages, liabilities or related expenses to have resulted from such Indemnitee's material breach of the Loan Documents or (ii) arise out of any claim, litigation, investigation or proceeding brought by such Indemnitee (or its Related Parties) against another Indemnitee (or its Related Parties) (other than any claim, litigation, investigation or proceeding brought by or against the Administrative Agent or any Arranger, acting in its capacity as the Administrative Agent or as an Arranger) that does not involve any act or omission of the Sponsor, Holdings, the Borrowers or any of their Subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by the Borrowers pursuant to this Section 9.03(b) to such Indemnitee for any fees, expenses, or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof. All amounts due under this paragraph (b) shall be payable by the Borrowers within 30 days (x) after written demand thereof, in the case of any indemnification obligations and (y) in the case of reimbursement of costs and expenses, after receipt of an invoice relating thereto, setting forth such expenses in reasonable detail and together with backup documentation supporting such reimbursement requests. This Section 9.03(b) and Section 9.03(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages from any non-Tax claim.

Section 9.04. Waiver of Claim. To the extent permitted by applicable law, no party to this Agreement shall assert, and each hereby waives, any claim against any other party hereto or any Related Party thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof, except, in the case of the Borrowers, to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 9.03.

Section 9.05. Successors and Assigns.

(a) 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 (i) except as provided under Section 6.06, the Borrowers may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrowers without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section (any attempted assignment or transfer not complying with the terms of this Section 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 paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Arrangers, the Administrative Agent, the Swingline Lender, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans or Additional Commitments added pursuant to Section 2.21, 2.22 or 9.02(c) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower Representative; provided that the Borrower Representative shall have been deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within 10 Business Days after receiving written notice thereof; provided, further, that no consent of the Borrower Representative shall be required for an assignment to, in the case of the Revolving Facility or any Additional Revolving Facility, another Revolving Lender or an Affiliate of a Revolving Lender and, in the case of the Term Facility or any Additional Term Facility, another Lender, an Affiliate of a Lender, an Approved Fund or, in either case, if an Event of Default under Section 7.01(a) or Section 7.01(f) or (g) (solely with respect to any Borrower) has occurred and is continuing, any other Eligible Assignee;

(B) the Administrative Agent; provided, that no consent of the Administrative Agent shall be required for an assignment to another Lender, an Affiliate of a Lender or an Approved Fund; and

(C) in the case of the Revolving Facility or any Additional Revolving Facility, any Issuing Bank and the Swingline Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Loans or commitments of any Class, the principal amount of Loans or commitments 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 and determined on an aggregate basis in the event of concurrent assignments to Related Funds or by Related Funds (as defined below)) shall not be less than $1,000,000 in the case of the Term Loans or Additional Term Loans and $2,500,000 in the case of the Revolving Facility or any Additional Revolving Facility unless each of the Borrower Representative and the Administrative Agent otherwise consent;

(B) 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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent); and

(D) the Eligible Assignee, if it shall not be a Lender, shall deliver on or prior to the effective date of such assignment, to the Administrative Agent (1) an Administrative Questionnaire and (2) any IRS forms and U.S. Tax Compliance Certificate required under Section 2.16.

The term "**Related Funds**" shall mean with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the Eligible Assignee thereunder shall be a party hereto 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 2.14, 2.15, 2.16 and 9.03 with respect to facts and circumstances occurring on or prior to the effective date of such assignment and subject to its obligations thereunder and under Section 9.13). If any such assignment by a Lender holding a Promissory Note hereunder occurs after the issuance of any Promissory Note hereunder to such Lender, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender such Promissory Note to the Administrative Agent for cancellation, and thereupon the Borrowers shall issue and deliver a new Promissory Note, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices 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 their respective successors and assigns, and the commitment of, and principal amount of and interest on the Loans and LC Disbursements owing to, each Lender, the Swingline Lender or each Issuing Bank pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation, shall not affect the Borrowers' obligations in respect of such Loans and LC Disbursements. The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Borrower Representative, the Administrative Agent, the Swingline Lender, the Issuing Banks and the Lenders may 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, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Borrower Representative, the Swingline Lender, the Issuing Banks and any Lender (but only as to its own holdings), at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire and tax certifications required by Section 9.05(b)(ii)(D)(2) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.05, if applicable, and any written consent to such assignment required by paragraph (b) of this Section 9.05, the Administrative Agent shall promptly accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the Eligible Assignee thereunder shall be deemed to confirm and agree with each other and the other parties hereto as follows: (A) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its commitments, and the outstanding balances of its Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Assumption, (B) except as set forth in clause (A) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of any Loan Party or any Subsidiary or the performance or observance by any Loan Party or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (C) such assignee represents and warrants that it is an Eligible Assignee, legally authorized to enter into such Assignment and Assumption; (D) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section 3.04(a) or delivered pursuant to Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (E) such assignee will independently and without reliance upon the Administrative Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (F) such assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (G) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) Any Lender may, without the consent of the Borrowers, the Borrower Representative, the Administrative Agent, the Issuing Banks, the Swingline Lender or any other Lender, sell participations to one or more banks or other entities (other than to any Disqualified Institution (so long as the list of Disqualified Institutions is available to the Lenders), any natural Person or, other than with respect to participations to Debt Fund Affiliates (any such participations to Debt Fund Affiliates being subject to the limitations set forth in Section 9.05(g)), the Borrowers, any of their Affiliates or any other Affiliated Lender) (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Borrower Representative, the Administrative Agent, the Swingline Lender, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. 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 to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in (x) clause (A) to the first proviso to Section 9.02(b) that directly and adversely affects the Loans or commitments in which such Participant has an interest and (y) clauses (B)(1), (2) or (3) to the first proviso to Section 9.02(b). Subject to paragraph (c)(ii) of this Section, the Borrowers agree that each Participant

shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 (subject to the requirements and limitations therein, including the requirements under Section 2.16(e) (it being understood that the documentation required under Section 2.16(e) 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, subject to the limitations set forth in Section 9.05(c)(ii). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.17(c) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.14, 2.15 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower Representative's prior written consent expressly acknowledging such Participant may receive a greater benefit. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless the Borrower Representative is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 2.16(e) as though it were a Lender with respect to payments made under any Loan Document.

Each Lender that sells a participation shall, acting for this purpose as a non-fiduciary agent of the Borrowers, maintain at one of its offices a copy of a register for the recordation of the names and addresses of each Participant and their respective successors and assigns, and principal amount of and interest on the Loans (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 entries in the Participant Register shall be conclusive, absent manifest error, and such Lender may treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding 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.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Institution or natural person) to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 9.05 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower Representative, the option to provide to the Borrowers all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrowers pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC

hereunder shall utilize the Commitment or Additional Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. 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 Borrowers under this Agreement (including its obligations under Section 2.14, 2.15 or 2.16) and no SPC shall be entitled to any greater amount under Section 2.12, 2.13 or 2.14 or any other provision of this Agreement or any other Loan Document that the Granting Lender would have been entitled to receive, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender) and (iii) the Granting Lender shall for all purposes including approval of any amendment, waiver or other modification of any provision of the Loan Documents, remain the Lender of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof; provided that (i) in the case of the Borrowers, such SPC's Granting Lender is in compliance in all material respects with its obligations to the Borrowers hereunder and (ii) each Lender designating any SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such SPC during such period of forbearance. In addition, notwithstanding anything to the contrary contained in this Section 9.05, any SPC may (i) with notice to, but without the prior written consent of, the Borrowers, the Borrower Representative or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(f) Any assignment or participation by a Lender without the Borrower Representative's consent to a Disqualified Institution or, to the extent the Borrower Representative's consent is required under this Section 9.05, to any other Person, shall (except with respect to any assignment or participation to a Lender that is an Eligible Assignee or cannot be reasonably identified as a Disqualified Institution pursuant to clause (c) of the definition thereof as of the date of such assignment or participation and subsequently becomes, or becomes reasonably identifiable as, a Disqualified Institution, which assignment or participation shall be subject to clause (ii) below) be void ab initio, and the Borrowers shall be entitled to seek specific performance to unwind any such assignment or participation in addition to any other remedies available to the Borrowers at law or in equity. Upon the request of any Lender, the Borrower Representative shall make available to such Lender the list of Disqualified Institutions, along with any additions to such list.

(i) If any assignment or participation under this Section 9.05 is made to any Lender that is an Eligible Assignee or cannot be reasonably identified as a Disqualified Institution pursuant to clause (c) of the definition thereof as of the date of such assignment or participation and subsequently becomes, or becomes reasonably identifiable as, a Disqualified Institution, then the Borrowers may, at their sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Commitment of such Disqualified Institution and repay all obligations of the Borrowers owing to such Disqualified Institution, (B) in the case of any outstanding Term Loans, purchase such Term Loans by paying the lesser of (x) par and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in the cases of clauses (x) and (y), *plus* accrued interest thereon, accrued fees and all other amounts payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse

(in accordance with and subject to the restrictions contained in this Section 9.05), all of its interests, rights and obligations under this Agreement to one or more Eligible Assignees; provided that (I) in the case of clause (A), the applicable Disqualified Institution has received payment of an amount equal to the lesser of (1) par and (2) the amount that such Disqualified Institution paid for the applicable Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the Borrowers, (II) in the case of clauses (A) and (B), the Borrowers shall be liable to the relevant Disqualified Institution under Section 2.15 if any LIBO Rate Loan owing to such Disqualified Institution is repaid or purchased other than on the last day of the Interest Period relating thereto and (III) in the case of clause (C), the relevant assignment shall otherwise comply with this Section 9.05 (except that no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph). Nothing in this Section 9.05(f) shall be deemed to prejudice any right or remedy that Holdings or the Borrowers may otherwise have at law or equity. Each Lender acknowledges and agrees that Holdings and its Subsidiaries will suffer irreparable harm if such Lender breaches any obligation under this Section 9.05 insofar as such obligation relates to any assignment, participation or pledge to any Disqualified Institution without the Borrower Representative's prior written consent. Additionally, each Lender agrees that Holdings and/or the Borrowers may seek to obtain specific performance or other equitable or injunctive relief to enforce this Section 9.05(f) against such Lender with respect to such breach without posting a bond or presenting evidence of irreparable harm.

(g) Notwithstanding anything to the contrary contained herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of any Class of its Term Loans or Additional Term Loans to an Affiliated Lender (A) through Dutch Auctions open to all Lenders holding such Class of the Term Loans or such Additional Term Loans, as applicable, on a *pro rata* basis or (B) through open market purchases on a non-pro rata basis, in each case with respect to clauses (A) and (B), without the consent of the Administrative Agent; provided that:

(i) any Term Loans or Additional Term Loans acquired by Holdings, the Borrowers, or any of their respective subsidiaries shall be retired and cancelled immediately upon the acquisition thereof;

(ii) any Term Loans or Additional Term Loans acquired by any Affiliate of Holdings or any Borrowers shall be immediately contributed to Holdings, the Borrowers or any of their Subsidiaries and shall be retired and cancelled immediately upon such contribution;

(iii) [reserved];

(iv) after giving effect to such assignment and to all other assignments to all Affiliated Lenders, (x) the aggregate principal amount of all Term Loans and Additional Term Loans then held by all Affiliated Lenders shall not exceed 25% of the aggregate principal amount of the Term Loans and Additional Term Loans then outstanding (after giving effect to any substantially simultaneous cancellations thereof) and (y) the number of Affiliated Lenders holding Obligations shall not exceed 49.9% of the number of all Lenders; provided that each of the parties hereto agrees and acknowledges that the Administrative Agent shall not be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person in connection with any compliance or non-compliance with this clause (g)(iv) or any purported assignment exceeding such percentage (it being understood and agreed that the cap set forth in this clause (iv) is intended to apply to any Loans made available by Affiliated Lenders by means other than formal assignment (*e.g.*, as a result of an acquisition of another Lender (other than a Debt Fund Affiliate) by an Affiliated Lender or the provision of Additional Term Loans by an Affiliated Lender); provided, further, that to the extent that any assignment to an Affiliated Lender would result in the aggregate principal amount of all Term Loans and Additional Term Loans held by Affiliated Lenders exceeding the 25% set forth above (after giving effect to any substantially simultaneous cancellations thereof), the assignment of such excess amount shall be void *ab initio*;

(v) in connection with any assignment effected pursuant to a Dutch Auction and/or open market purchase conducted by Holdings, the Borrowers or any of their Affiliates, (A) Indebtedness incurred under the Revolving Facility or any Additional Revolving Facility shall not be utilized to fund such assignment and (B) no Default or Event of Default shall have occurred and be continuing at the time of acceptance of bids for the Dutch Auction or the consummation of such open market purchase;

(vi) in connection with each assignment pursuant to this clause (g), the Administrative Agent shall have been provided written notice by the assigning Lender in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender with respect to the identity of such Affiliated Lender and the amount of the Loans being assigned thereto;

(vii) by its acquisition of Term Loans or Additional Term Loans, an Affiliated Lender shall be deemed to have acknowledged and agreed that:

(A) the Term Loans and Additional Term Loans held by such Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of Required Lenders or any other Lender vote (and the Term Loans held by such Affiliated Lender shall be deemed to be voted *pro rata* along with the other Lenders that are not Affiliated Lenders), except that such Affiliated Lender shall have the right to vote (and the Term Loans and Additional Term Loans held by such Affiliated Lender shall not be so disregarded) with respect to any amendment, modification, waiver, consent or other action that requires the vote of all Lenders or all Lenders directly and adversely affected thereby, as the case may be; provided that no amendment, modification, waiver, consent or other action shall (1) disproportionately affect such Affiliated Lender in its capacity as a Lender as compared to other Lenders of the same Class that are not Affiliated Lenders or (2) deprive any Affiliated Lender of its share of

any payments which the Lenders are entitled to share on a *pro rata* basis hereunder, in each case without the consent of such Affiliated Lender; and

(B) Affiliated Lenders, solely in their capacity as an Affiliated Lender, will not be entitled to (i) attend (including by telephone) or participate in any Conference Call, meeting or discussions (or portion thereof) among the Administrative Agent or any Lender or among Lenders to which the Loan Parties or their representatives are not invited or (ii) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among the Administrative Agent and one or more Lenders, except to the extent such information or materials have been made available by the Administrative Agent or any Lender to any Loan Party or its representatives (and in any case, other than the right to receive notices of Borrowings, prepayments and other administrative notices in respect of its Term Loans or Additional Term Loans required to be delivered to Lenders pursuant to Article 2);

(viii) in the case of any Dutch Auction or open market purchase conducted by an Affiliated Lender, no Affiliated Lender shall be required to make a representation that, as of the date of any such purchase and assignment, it is not in possession of material non-public information with respect to the Borrowers or any of its subsidiaries or their respective securities; and

(ix) the aggregate principal amount of all Term Loans and Additional Term Loans purchased pursuant to an open market purchase by Holdings, any subsidiary of Holdings and any other Affiliated Lender shall not, at any time, exceed 25% of the lesser of (x) the aggregate principal amount of the Term Loans on the Third Amendment Effective Date and (y) the aggregate principal amount of the then-outstanding Term Loans and Additional Term Loan.

Notwithstanding anything to the contrary contained herein (but subject to clause (ix) above), any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans or Additional Term Loans of any Class to a Debt Fund Affiliate, and any Debt Fund Affiliate may, from time to time, purchase Term Loans or Additional Term Loans of any Class (x) on a non-*pro rata* basis through Dutch Auctions open to all Lenders holding Term Loans or Additional Term Loans Loans of such Class, as applicable, on a *pro rata* basis or (y) on a non-*pro rata* basis through open market purchases without the consent of the Administrative Agent, in each case, without the necessity of meeting the requirements set forth in subclauses (i) through (vii) of this clause (g); provided that the Term Loans, Additional Term Loans and unused commitments and other Loans of any Debt Fund Affiliates shall not account for more than 49.9% of the amounts included in determining whether the Required Lenders have (A) consented to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to the immediately succeeding paragraph, any plan of reorganization pursuant to the Bankruptcy Code, (B) otherwise acted on any matter related to any Loan Document or (C) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document. Any Term Loans or Additional Term Loans acquired by any Debt Fund Affiliate may (but shall not be required to) be contributed to Holdings, the Borrowers or any of their subsidiaries for purposes of cancellation of such Indebtedness (it being understood that such Term Loans or Additional Term Loans shall be retired and cancelled immediately upon such contribution); provided that upon such cancellation of Indebtedness, the aggregate outstanding principal amount of the Term Loans or Additional Term Loans shall be deemed reduced, as of the date of such contribution, by

the full par value of the aggregate principal amount of the Term Loans or Additional Term Loans so contributed and cancelled, and each principal repayment installment with respect to the Term Loans pursuant to Section 2.09(a) shall be reduced *pro rata* by the aggregate principal amount of Term Loans so contributed and cancelled.

Each Affiliated Lender and each Debt Fund Affiliate agrees to notify the Administrative Agent promptly if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent promptly if it becomes an Affiliated Lender or a Debt Fund Affiliate, it being understood that if an Affiliated Lender or a Debt Fund Affiliate acquires a Lender that would otherwise constitute (i) a Debt Fund Affiliate, then the 49.9% threshold above shall include the Term Loans and any commitments and other Loans of such newly acquired Lender and (ii) a Non-Debt Fund Affiliate, then the 25.0% threshold set forth in clause (g)(iv) above shall include the Term Loans of such newly acquired Lender.

Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that, if a proceeding under any Debtor Relief Law shall be commenced by or against any Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Term Loans or Additional Term Loans held by such Affiliated Lender in any manner in the Administrative Agent's sole discretion, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Term Loans or Additional Term Loans held by it as the Administrative Agent directs; provided that (a) such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) and (b) the Administrative Agent shall not be entitled to vote on behalf of such Affiliated Lender, in each case, in connection with any matter to the extent any such matter proposes to treat any Obligations held by such Affiliated Lender in a manner that is different than the proposed treatment of similar Obligations held by Lenders that are not Affiliates of the Borrowers. Each Affiliated Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Affiliated Lender's attorney-in-fact, with full authority in the place and stead of such Affiliated Lender and in the name of such Affiliated Lender (solely in respect of Term Loans or Additional Term Loans and participations therein and not in respect of any other claim or status such Affiliated Lender may otherwise have), from time to time in the Administrative Agent's discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of (but subject to the limitations set forth in) this paragraph.

Section 9.06. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Swingline Lender, any Issuing Bank or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.14, 2.15, 2.16, 9.03 and 9.13 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Revolving Credit Commitment or any Additional Commitments, the occurrence of the Termination Date or the termination of this Agreement or any provision hereof but in each case, subject to the limitations set forth in this Agreement.

Section 9.07. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and the Fee Letter and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by Holdings, the Borrowers, the Borrower Representative, the other Loan Parties party hereto, the Administrative Agent, the Arrangers, the Lenders party hereto, the Swingline Lender and the Issuing Bank and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by email as a ".pdf" or ".tif" attachment shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.08. Severability. To the extent permitted by law, any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.09. Right of Setoff. If an Event of Default shall have occurred and be continuing, upon the written consent of the Administrative Agent, each Issuing Bank, the Swingline Lender and each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Administrative Agent, such Issuing Bank, the Swingline Lender or such Lender or Affiliate (including by branches and agencies of the Administrative Agent, such Issuing Bank, the Swingline Lender or such Lender, wherever located) to or for the credit or the account of any Borrower or any Loan Guarantor against any of and all the Secured Obligations held by the Administrative Agent, such Issuing Bank, the Swingline Lender or such Lender or Affiliate, irrespective of whether or not the Administrative Agent, such Issuing Bank, the Swingline Lender or such Lender or Affiliate shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or the Issuing Bank or Swingline Lender different than the branch or office holding such deposit or obligation on such Indebtedness. Any applicable Lender, Issuing Bank, Swingline Lender or Affiliate shall promptly notify the Borrower Representative and the Administrative Agent of such set-off or application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender, each Issuing Bank, the Swingline Lender, the Administrative Agent and each Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender, Issuing Bank, Swingline Lender, Administrative Agent or Affiliate may have. NOTWITHSTANDING THE FOREGOING, AT ANY TIME THAT ANY OF THE SECURED OBLIGATIONS SHALL BE SECURED BY REAL PROPERTY LOCATED IN CALIFORNIA, NO LENDER SHALL EXERCISE A RIGHT OF SETOFF LENDER'S LIEN OR COUNTERCLAIM OR TAKE ANY COURT OR ADMINISTRATIVE ACTION OR INSTITUTE ANY PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR ANY LOAN DOCUMENT UNLESS IT IS TAKEN WITH THE CONSENT OF THE LENDERS REQUIRED BY SECTION 9.02 OF THIS AGREEMENT OR APPROVED IN WRITING BY THE ADMINISTRATIVE AGENT, IF SUCH SETOFF OR ACTION

OR PROCEEDING WOULD OR MIGHT (PURSUANT TO SECTIONS 580a, 580b, 580d AND 726 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR SECTION 2924 OF THE CALIFORNIA CIVIL CODE, IF APPLICABLE, OR OTHERWISE) AFFECT OR IMPAIR THE VALIDITY, PRIORITY, OR ENFORCEABILITY OF THE LIENS GRANTED TO THE ADMINISTRATIVE AGENT PURSUANT TO THE COLLATERAL DOCUMENTS OR THE ENFORCEABILITY OF THE PROMISSORY NOTES AND OTHER OBLIGATIONS HEREUNDER, AND ANY ATTEMPTED EXERCISE BY ANY LENDER OR ANY SUCH RIGHT WITHOUT OBTAINING SUCH CONSENT OF THE PARTIES AS REQUIRED ABOVE, SHALL BE NULL AND VOID. THIS PARAGRAPH SHALL BE SOLELY FOR THE BENEFIT OF EACH OF THE LENDERS AND THE ADMINISTRATIVE AGENT HEREUNDER.

Section 9.10. Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS), WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED, THAT (I) THE INTERPRETATION OF THE DEFINITION OF "CLOSING DATE MATERIAL ADVERSE EFFECT" (AND WHETHER OR NOT A CLOSING DATE MATERIAL ADVERSE EFFECT HAS OCCURRED), (II) THE DETERMINATION OF THE ACCURACY OF ANY SPECIFIED ACQUISITION AGREEMENT REPRESENTATION AND WHETHER AS A RESULT OF ANY INACCURACY THEREOF, VERTICAL/TRIGEN OR ITS APPLICABLE AFFILIATE HAS THE RIGHT TO TERMINATE ITS OBLIGATIONS UNDER THE ACQUISITION AGREEMENT OR TO DECLINE TO CONSUMMATE THE ACQUISITION AND (III) THE DETERMINATION OF WHETHER THE ACQUISITION HAS BEEN CONSUMMATED IN ACCORDANCE WITH THE TERMS OF THE ACQUISITION AGREEMENT AND, IN ANY CASE, CLAIMS OR DISPUTES ARISING OUT OF ANY SUCH INTERPRETATION OR DETERMINATION OR ANY ASPECT THEREOF, IN EACH CASE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, FEDERAL COURT; PROVIDED THAT WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE ACQUISITION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY AND WHICH DO NOT INVOLVE ANY CLAIMS AGAINST THE ARRANGERS, THE ISSUING BANKS, THE SWINGLINE LENDER OR THE LENDERS, THIS SENTENCE SHALL NOT OVERRIDE ANY JURISDICTION PROVISION IN THE ACQUISITION AGREEMENT. THE PARTIES HERETO AGREE THAT SERVICE OF ANY

PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT AND THE LENDERS RETAIN THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY LOAN DOCUMENT THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 9.11. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HERETO (a) 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 (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.12. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.13. Confidentiality. The Administrative Agent, the Swingline Lender, each Lender, each Issuing Bank and each Arranger agrees (and each Lender agrees to cause its SPC, if any) to maintain the confidentiality of the Confidential Information (as defined below), except that Confidential Information may be disclosed (a) to its and its Affiliates' directors (or equivalent managers), officers, employees, independent auditors, or other experts and advisors, including accountants, legal counsel and other advisors (collectively, the "**Representatives**") on a "need to know" basis solely in connection with the transactions contemplated hereby and who are informed of the confidential nature of such Confidential Information and are or have been advised of their obligation to keep such Confidential Information of this type confidential; provided that such Person shall be responsible for its Affiliates' and their Representatives' compliance with this paragraph; provided, further, that unless the Borrower Representative otherwise consents, no such disclosure shall be made by the Administrative Agent, any Issuing Bank, the Swingline Lender, any Arranger, any Lender or any Affiliate or Representative thereof to any Affiliate or Representative of the Administrative Agent, any Issuing Bank, the Swingline Lender, any Arranger, or any Lender that (i) is engaged as a principal primarily in private equity, mezzanine financing or venture capital or (ii) is a Disqualified Institution, (b) upon the demand or request of any regulatory (including any self-regulatory body) or governmental authority purporting to have jurisdiction over such Person or its Affiliates (in which case such Person shall (i) except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, to the extent permitted by law, inform the Borrower Representative promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (c) to the extent compelled by legal process in, or reasonably necessary to, the defense of such legal, judicial or administrative proceeding, in any legal, judicial or administrative proceeding or otherwise as required by applicable Requirements of Law, rule or regulation (in which case such Person shall (i) to the extent permitted by law, inform the Borrower Representative promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or the enforcement of rights hereunder or thereunder (in which case such Person shall (i) to the extent permitted by law, inform the Borrower Representative promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (f) subject to an acknowledgment and agreement by such recipient that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower Representative) to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement, including any SPC (in each case other than a Disqualified Institution), (ii) any pledgee referred to in Section 9.05, and (iii) any actual or prospective, direct or indirect contractual counterparty (or its advisors) to any Derivative Transaction (including any credit default swap) or similar derivative product relating to the Loan Parties and their obligations subject to acknowledgment and agreement by such recipient that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower Representative), (g) with the prior written consent of the Borrower Representative and (h) to the extent such Confidential Information becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives. For the purposes of this Section, "**Confidential Information**" means all information relating to Holdings, the Borrowers or any of their subsidiaries or their businesses, the Sponsor or the

Transactions (including any information obtained by the Administrative Agent, any Issuing Bank, the Swingline Lender, any Lender or any Arranger, or any of their Affiliates or Representatives, based on a review of the books and records relating to Holdings, the Borrowers or any of their subsidiaries or Affiliates from time to time, including prior to the date hereof) other than any such information that is publicly available to the Administrative Agent or any Arranger, the Swingline Lender, an Issuing Bank or a Lender on a non-confidential basis prior to disclosure by Holdings, the Borrowers or any of their subsidiaries. For the avoidance of doubt, in no event shall any disclosure of such Confidential Information be made to any Disqualified Institution (which was a Disqualified Institution at the time such disclosure was made).

Section 9.14. No Fiduciary Duty. Each of the Administrative Agent, the Arrangers, the Syndication Agent, each Lender, the Swingline Lender, each Issuing Bank and their respective Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and any Loan Party, its respective stockholders or its respective affiliates, on the other. The Loan Parties acknowledge and agree that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and each Loan Party, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto.

Section 9.15. Several Obligations; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan, issue any Letter of Credit or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder.

Section 9.16. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act or the Beneficial Ownership Regulation, as applicable, hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, as applicable, it is required to obtain, verify and record information that identifies each Borrower and Loan Guarantor, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify the Loan Parties in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation, as applicable.

Section 9.17. Disclosure. Each Loan Party, each Issuing Bank and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold

investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.18. Appointment for Perfection. Each Lender, each Issuing Bank and the Swingline Lender hereby appoint each other Lender and each Issuing Bank as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent, the Issuing Banks, the Swingline Lender and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession. Should any Lender or Issuing Bank or the Swingline Lender (in each case, other than the Administrative Agent) obtain possession of any such Collateral, such Lender or Issuing Bank shall notify the Administrative Agent thereof; and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 9.19. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or Letter of Credit, together with all fees, charges and other amounts which are treated as interest on such Loan or Letter of Credit under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender, Swingline Lender or Issuing Bank holding such Loan or Letter of Credit in accordance with applicable law, the rate of interest payable in respect of such Loan or Letter of Credit hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or Letter of Credit but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender, Swingline Lender or Issuing Bank in respect of other Loans or Letters of Credit or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender, Swingline Lender or Issuing Bank.

Section 9.20. Bail-in Provisions. 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 ~~EEA~~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 ~~an EEA~~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 ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an ~~EEA~~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 ~~EEA~~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 ~~any EEA~~the applicable Resolution Authority.

Section 9.01. Conflicts. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event of any conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall govern and control.

Section 9.02. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC, a "**Supported QFC**"), the parties hereto acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

ARTICLE 10 LOAN GUARANTY

Section 10.01. Loan Guaranty. Each Loan Guarantor hereby agrees that it is jointly and severally liable for, and, as primary obligor and not merely as surety, and absolutely and unconditionally and irrevocably guarantees to the Administrative Agent for the ratable benefit of the Secured Parties the full and prompt payment upon the failure of any Borrower to do so, when and as the same shall become due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations (collectively the "**Guaranteed Obligations**"). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. If any or all of the Guaranteed Obligations becomes due and payable hereunder, each Loan Guarantor, unconditionally and irrevocably, promises to pay such Guaranteed Obligations to the Administrative Agent and/or the other Secured Parties, on demand, together with any and all expenses which may be incurred by the Administrative Agent and the other Secured Parties in collecting any of the

Guaranteed Obligations, to the extent reimbursable in accordance with Section 9.03. Each Loan Guarantor unconditionally and irrevocably guarantees the payment of any and all of the Guaranteed Obligations to the Secured Parties whether or not due or payable by any Borrower upon the occurrence of any of the Events of Default specified in Sections 7.01(f) or 7.01(g), and in such event, irrevocably and unconditionally promises to pay such indebtedness to the Secured Parties, on demand, in lawful money of the United States.

Section 10.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent or any Lender to sue any Borrower, any other Loan Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an "**Obligated Party**"), or otherwise to enforce its rights in respect of any Collateral securing all or any part of the Guaranteed Obligations. The Administrative Agent may enforce this Loan Guaranty upon the occurrence and during the continuance of an Event of Default.

Section 10.03. No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional, irrevocable and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than as set forth in Section 10.12), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other guarantor of or other Person liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, any Lender or any other Person, whether in connection herewith or in any unrelated transactions; (v) any direction as to application of payments by any Borrower, the Borrower Representative or by any other party; (vi) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Guaranteed Obligations; (vii) any payment on or in reduction of any such other guaranty or undertaking; (viii) any dissolution, termination or increase, decrease or change in personnel by the Borrowers or (ix) any payment made to any Secured Party on the Guaranteed Obligations which any such Secured Party repays to any Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each Loan Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

(b) Except for termination of a Loan Guarantor's obligations hereunder or as expressly permitted by Section 10.12, the obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent or any Secured Party to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct

security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other guarantor of or other Person liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent or any Secured Party with respect to any Collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than as set forth in Section 10.12).

Section 10.04. Defenses Waived. To the fullest extent permitted by applicable law, and except for termination of a Loan Guarantor's obligations hereunder or as expressly permitted by Section 10.12, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any other Loan Guarantor or arising out of the disability of any Borrower or any other Loan Guarantor or any other party or the unenforceability of all or any part of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower or any other Loan Guarantor. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, including notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Loan Guaranty, and notices of the existence, creation or incurring of new or additional Guaranteed Obligations, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person, including any right (except as shall be required by applicable statute and cannot be waived) to require any Secured Party to (i) proceed against any Borrower, any other guarantor or any other party, (ii) proceed against or exhaust any security held from any Borrower, any other Loan Guarantor or any other party or (iii) pursue any other remedy in any Secured Party's power whatsoever. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent permitted by applicable law), accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any Collateral securing all or a part of the Guaranteed Obligations, and the Administrative Agent may, at its election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, or any security, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except as otherwise provided in Section 10.12. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

Section 10.05. Authorization. The Loan Guarantors authorize the Secured Parties without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder (except as set forth in Section 10.12), from time to time to:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including any increase or decrease in the principal amount thereof or the rate of interest or fees thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and this Loan Guaranty shall apply to the Guaranteed Obligations as so changed, extended, renewed or altered;

(b) take and hold security for the payment of the Guaranteed Obligations and sell, exchange, release, impair, surrender, realize upon or otherwise deal with in any manner and in any order

any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(c) exercise or refrain from exercising any rights against any Borrower, any other Loan Party or others or otherwise act or refrain from acting;

(d) release or substitute any one or more endorsers, guarantors, Borrowers, other Loan Parties or other obligors;

(e) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of any Borrower to its creditors other than the Secured Parties;

(f) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of any Borrower to the Secured Parties regardless of what liability or liabilities of such Borrower remain unpaid;

(g) consent to or waive any breach of, or any act, omission or default under, this Agreement, any other Loan Document, any Hedge Agreement or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify or supplement this Agreement, any other Loan Document, any Hedge Agreement or any of such other instruments or agreements; and/or

(h) take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of the Loan Guarantors from their respective liabilities under this Loan Guaranty.

Section 10.06. Rights of Subrogation. Any indebtedness of any Borrower now or hereafter owing to any Loan Guarantor is hereby subordinated to the Obligations owing to the Secured Parties; and if the Administrative Agent so requests at a time when an Event of Default exists, all such indebtedness of such Borrower to such Loan Guarantor shall be collected, enforced and received by such Loan Guarantor for the benefit of the Secured Parties and be paid over to the Administrative Agent on behalf of the Secured Parties on account of the Guaranteed Obligations to the Secured Parties, but without affecting or impairing in any manner the liability of such Loan Guarantor under the other provisions of this Loan Guaranty. Prior to the transfer by any Loan Guarantor of any note or negotiable instrument evidencing any such indebtedness of such Borrower to such Loan Guarantor, such Loan Guarantor shall mark such note or negotiable instrument with a legend that the same is subject to this subordination. No Loan Guarantor will assert any right, claim or cause of action, including a claim of subrogation, contribution or indemnification that it has against any Loan Party in respect of this Loan Guaranty until the occurrence of the Termination Date.

Section 10.07. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise, each Loan Guarantor’s obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the other Loan Guarantors forthwith on demand by the Administrative Agent.

Section 10.08. Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of each other Loan Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, any Lender or any other Secured Party shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

Section 10.09. Maximum Liability. It is the desire and intent of the Loan Guarantors and the Secured Parties that this Loan Guaranty shall be enforced against the Loan Guarantors to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, Federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Loan Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Guarantors or the Secured Parties, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Loan Guarantor's "**Maximum Liability**"). Each Loan Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the Maximum Liability of each Loan Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of the Secured Parties hereunder; provided that nothing in this sentence shall be construed to increase any Loan Guarantor's obligations hereunder beyond its Maximum Liability.

Section 10.10. Contribution. In the event any Loan Guarantor (a "**Paying Guarantor**") shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any Collateral granted by it to secure its obligations under this Loan Guaranty, each other Loan Guarantor (each a "**Non-Paying Guarantor**") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Guarantor Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article 10, each Non-Paying Guarantor's "**Guarantor Percentage**" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (a) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrowers after the date hereof (whether by loan, capital infusion or by other means) to (b) the aggregate Maximum Liability of all Loan Guarantors hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Loan Guarantor, the aggregate amount of all monies received by such Loan Guarantors from the Borrowers after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Loan Guarantor's several liability for the entire amount of the Guaranteed Obligations (up to such Loan Guarantor's Maximum Liability). Each of the Loan Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the Secured Obligations until the Termination Date. This provision is for the benefit of the Administrative Agent, the Lenders and the other Secured Parties and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

Section 10.11. Liability Cumulative. The liability of each Loan Guarantor under this Article 10 is in addition to and shall be cumulative with all liabilities of such Loan Guarantor to the Administrative

Agent and the Lenders under this Agreement and the other Loan Documents to which such Loan Guarantor is a party or in respect of any obligations or liabilities of the other Loan Guarantors, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

Section 10.12. Release of Loan Guarantors. Notwithstanding anything in Section 9.02(b) to the contrary, a Subsidiary Guarantor shall automatically be released from its obligations hereunder and its Loan Guaranty shall be automatically released (a) upon the consummation of any transaction permitted hereunder if as a result thereof such Subsidiary Guarantor shall cease to be a Subsidiary (or becomes an Excluded Subsidiary) or (b) upon the occurrence of the Termination Date. In connection with any such release, the Administrative Agent shall promptly execute and deliver to such Subsidiary Guarantor, at such Subsidiary Guarantor's expense, all documents that such Subsidiary Guarantor shall reasonably request to evidence termination or release; provided that (i) no such release under clause (a) hereof shall occur solely because a Subsidiary Guarantor has become an Immaterial Subsidiary or a non-Wholly-Owned Subsidiary unless the Borrower Representative so elects and notifies the Administrative Agent in writing and (ii) to the extent any Subsidiary became a Subsidiary Guarantor in order to consummate a merger, consolidation or amalgamation permitted under Section 6.06(a)(ii)(x), any such release under clause (a) hereof shall constitute an Investment as if such merger, consolidation or amalgamation had been consummated pursuant to Section 6.06(a)(ii)(y) as of the date of such release. Any execution and delivery of documents pursuant to the preceding sentence of this Section 10.12 shall be without recourse to or warranty by the Administrative Agent.

Section 10.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Loan Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13, or otherwise under the Loan Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been paid in full and the Commitments and all Letters of Credit have been terminated. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[Signature Pages to Follow]

Summary report: Litéra® Change-Pro TDC 7.5.0.205 Document comparison done on 3/16/2021 2:44:06 PM	
Style name: RG_Default_Style	
Intelligent Table Comparison: Active	
Original DMS: iw://RGDMS/Active/65971193/18	
Modified DMS: iw://RGDMS/Active/89609180/4	
Changes:	
Add	277
~~Delete~~	293
~~Move From~~	4
Move To	4
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	578

Execution Version

FOURTH AMENDMENT TO CREDIT AGREEMENT

THIS FOURTH AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is entered into as of December 12, 2020 (the "Fourth Amendment Effective Date"), by and among, OSMOTICA PHARMACEUTICAL CORP., a Delaware corporation ("OPC"), ORBIT BLOCKER I LLC, a Delaware limited liability company ("OBI"), ORBIT BLOCKER II LLC, a Delaware limited liability company ("OBII"), VALKYRIE GROUP HOLDINGS, INC., a Delaware corporation ("Valkyrie" and together with OPC, OBI and OBII, the "Borrowers"), OSMOTICA HOLDINGS US LLC, a Delaware limited liability company ("Holdings") in its own capacity and as Borrower Representative, the other Loan Parties party hereto, CIT BANK, N.A. ("CIT"), as Administrative Agent and Swingline Lender, and the Lenders party hereto.

W I T N E S S E T H:

WHEREAS, the Borrowers, the other Loan Parties, the Administrative Agent, the Lenders from time to time party thereto and the other persons party thereto are parties to that certain Credit Agreement dated as of February 3, 2016 (as amended by that certain First Amendment to Credit Agreement, dated as of November 10, 2016, that certain Second Amendment to Credit Agreement, dated as of April 28, 2017, that certain Third Amendment to Credit Agreement, dated as of December 21, 2017, and that certain Limited Consent entered into as of May 21, 2020, the "Existing Credit Agreement"; and the Existing Credit Agreement, as amended by this Amendment, the "Credit Agreement"; capitalized terms used herein that are not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement);

WHEREAS, the Borrowers have requested that the Administrative Agent and the Lenders amend certain provisions of the Existing Credit Agreement, and, subject to the satisfaction of the conditions set forth herein, the Administrative Agent, the Swingline Lender, and the Lenders constituting Required Lenders are willing to do so, on the terms and in reliance upon the representations and warranties set forth herein; and

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. Amendments to Existing Credit Agreement. Upon satisfaction of the conditions set forth in Section 2 hereof, the Existing Credit Agreement and, to the extent included in Annex A, each Schedule or Exhibit to the Existing Credit Agreement, are hereby amended by deleting the stricken text (as indicated by ~~struck-through text~~), and by inserting the text (as indicated by bold, double-underlined text), as set forth in the pages of the Existing Credit Agreement attached as Annex A hereto.

2. Conditions. The effectiveness of this Amendment is subject to the satisfaction of each of the following conditions precedent or waiver thereof by the Lenders constituting Required Lenders:

(a) the Administrative Agent (or its counsel) shall have received executed

counterparts of this Amendment signed by Holdings, the Borrowers and each other Loan Party as of the date hereof;

(b) this Amendment shall have been executed and delivered by (i) the Administrative Agent and (ii) Lenders constituting Required Lenders;

(c) the representations and warranties in Section 3 hereof shall be true and correct in all material respects (or, if qualified by "materiality", "Material Adverse Effect" or similar term or qualification, in all respects) on and as of such date, *provided* that to the extent that a representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects (or, if qualified by "materiality", "Material Adverse Effect" or similar term or qualification, in all respects) as of such date or period, as the case may be;

(d) at the time of and immediately after giving effect to the effectiveness of this Amendment, no Default or Event of Default shall have occurred;

(e) there shall be no order, injunction or decree of any Governmental Authority restraining or prohibiting this Amendment or any of the transactions contemplated hereby;

(f) there shall not exist any material action, suit, investigation, litigation or proceeding pending or overtly threatened in any court or before any arbitrator or Governmental Authority that challenges any of the Loan Documents, including this Amendment, or any of the transactions contemplated hereby; and

(g) the Administrative Agent shall have received the reasonable fees, costs and expenses payable to it in accordance with Section 9.03 of the Credit Agreement, including in connection with this Amendment (but without regards to the last sentence of such Section), to the extent invoiced at least two (2) Business Days prior to the Fourth Amendment Effective Date.

3. Representations and Warranties. To induce the Administrative Agent and the Lenders to execute and deliver this Amendment, each Loan Party hereby represents and warrants to the Administrative Agent and each Lender, as follows:

(a) The execution, delivery and performance of this Amendment and all documents and instruments delivered in connection herewith are within each applicable Loan Party's corporate or other organizational power and have been duly authorized by all necessary corporate or other organizational action of such Loan Party. This Amendment and all documents and instruments delivered in connection herewith to which any Loan Party is a party have been duly executed and delivered by such Loan Party and is a legal, valid and binding obligations of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

(b) The execution and delivery of this Amendment and all documents and instruments delivered in connection herewith by each Loan Party party thereto and the performance by such Loan Party thereof (i) will not violate (x) any of such Loan Party's Organizational Documents or (y) any Requirements of Law applicable to such Loan Party

which, in the case of this clause (i)(y) could reasonably be expected to have a Material Adverse Effect and (ii) will not violate or result in a default under any Contractual Obligation of any of the Loan Parties which in the case of this clause (ii) could reasonably be expected to result in a Material Adverse Effect.

(c) On the Fourth Amendment Effective Date, both before and after giving effect to this Amendment and the transactions contemplated hereby, each of representations and warranties of the Loan Parties set forth in the Existing Credit Agreement, the Credit Agreement and the other Loan Documents, is true and correct in all material respects (or, if qualified by "materiality", "Material Adverse Effect" or similar term or qualification, in all respects) on and as of the date hereof; *provided* that to the extent that a representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects (or, if qualified by "materiality", "Material Adverse Effect" or similar term or qualification, in all respects) as of such date or period, as the case may be.

(d) At the time of and immediately after giving effect to this Amendment, no Default or Event of Default has occurred.

4. Reference to and Effect upon the Credit Agreement.

(a) Except as specifically amended hereby, all terms, conditions, covenants, representations and warranties contained in the Existing Credit Agreement and other Loan Documents, and all rights of the Lenders and the other Secured Parties, and all of the Obligations, shall remain in full force and effect. The Borrowers and the other Loan Parties hereby confirm that the Credit Agreement and the other Loan Documents are in full force and effect and that neither any Borrower nor any other Loan Party has any right of setoff, recoupment or other offset or any defense, claim or counterclaim with respect to any of the Obligations, the Credit Agreement or any other Loan Document.

(b) The execution, delivery and effectiveness of this Amendment shall not directly or indirectly constitute, and are not intended to constitute, (i) a novation of any of the Obligations under the Existing Credit Agreement, the Credit Agreement or other Loan Documents or (ii) a course of dealing or other basis for altering any Obligations or any other contract or instrument.

(c) From and after the date hereof, (i) the term "Agreement" in the Credit Agreement, and all references to the Credit Agreement in any other Loan Document, shall mean the Credit Agreement, as modified hereby and (ii) the term "Loan Documents" in the Credit Agreement and the other Loan Documents shall include, without limitation, this Amendment and any agreements, instruments and other documents executed and/or delivered in connection herewith.

5. Counterparts; Integration; Effectiveness. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or by email as a ".pdf" or ".tif" attachment shall be effective as delivery of a manually executed

counterpart of this Amendment. The words "execution," signed," "signature," and words of like import in this Amendment or in any other certificate, agreement or document related to this Amendment or the other Loan Documents shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the UCC. This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

6. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that any assignment by any Lender shall be subject to the provisions of Section 9.05 of the Credit Agreement, and *provided*, *further*, that the Borrowers may not assign or otherwise transfer any of their rights or obligations under this Amendment without the prior written consent of the Administrative Agent (and any attempted assignment or transfer by the Borrowers without such consent shall be null and void).

7. Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, FEDERAL COURT. THE PARTIES HERETO AGREE THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR

PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT AND THE LENDERS RETAIN THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AMENDMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01 OF THE CREDIT AGREEMENT OR AS INDICATED ON THE APPLICABLE SIGNATURE PAGE ATTACHED HERETO. EACH PARTY TO THIS AMENDMENT HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AMENDMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

8. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (a) 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 (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES

HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9. Severability. To the extent permitted by law, any provision hereof held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

10. Headings. Section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

11. Reaffirmation. Each of the Loan Parties, as borrower, debtor, grantor, pledgor, guarantor, assignor, or in other similar capacity in which such Loan Party grants or granted liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party (after giving effect to this Amendment) and (ii) grants to the Administrative Agent, for the benefit of the Secured Parties (as such term is defined in the Pledge and Security Agreement), a lien on and security interest in, all of its right, title and interest in, to and under the Collateral of such Loan Party, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations and, to the extent such Loan Party granted liens on or a security interests in any of its property pursuant to any such Loan Document as security for or otherwise guaranteed the Obligations under or with respect to the Loan Documents, ratifies and reaffirms such grant of security interests and liens and guarantee, as applicable, and confirms and agrees that such security interests, liens and guarantee hereafter secure all of the Obligations as amended hereby. Each of the Loan Parties hereby consents to this Amendment and acknowledges that, except as amended by this Amendment, each of the Loan Documents remains in full force and effect and is hereby ratified and reaffirmed. The execution of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or Lenders, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

12. General Release. In consideration of, among other things, the Administrative Agent's and the Lenders' execution and delivery of this Amendment, each of the Borrowers and the other Loan Parties, on behalf of themselves and their agents, representatives, officers, directors, advisors, employees, Subsidiaries, affiliates, successors and assigns (collectively, "Releasors"), hereby forever agrees and covenants not to sue or prosecute against any Releasee (as hereinafter defined) and hereby forever waives, releases and discharges, to the fullest extent permitted by law, each Releasee from any and all claims (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever, that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity (collectively, the "Claims"), against the Administrative Agent, any Lender, any

Issuing Bank and any other Secured Party (the "Lender Parties") in any capacity and their respective affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys, advisors and other representatives of each of the foregoing (collectively, the "Releasees"), in each case, based in whole or in part on facts, whether or not now known, which occurred before the date hereof, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Loan Documents or transactions contemplated thereby, or any actions or omissions in connection therewith, in each case prior to the date hereof, and (ii) any aspect of the dealings or relationships between or among Borrowers and the other Loan Parties, on the one hand, and any or all of the Lender Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof, in each case, prior to the date hereof. In entering into this Amendment, the Borrowers and each other Loan Party consulted with, and has been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity thereof. For the avoidance of doubt, nothing in this Section 13 shall be construed to release any claim, action or cause of action which any Releasor may have arising out of this Amendment or the transactions contemplated hereby or with respect to any actions or events occurring on or after the date hereof. The provisions of this Section shall survive the termination of this Amendment, the Credit Agreement, the other Loan Documents and payment in full of the Obligations.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment as of the date set forth above.

BORROWERS

OSMOTICA PHARMACEUTICAL CORP.

By: _____
Name:
Title:

ORBIT BLOCKER I LLC

By: _____
Name:
Title:

ORBIT BLOCKER II LLC

By: _____
Name:
Title:

VALKYRIE GROUP HOLDINGS, INC.

By: _____
Name:
Title:

OTHER LOAN PARTIES:

OSMOTICA HOLDINGS US LLC

By: _____
Name:
Title:

OSMOTICA HOLDINGS CORP LIMITED

By: _____
Name:
Title:

OSMOTICA KERESKEDELMI ÉS SZOLGÁLTATÓ KORLÁTOLT FELELŐSSÉGŰ TÁRSASÁG

By: _____
Name:
Title:

VERTICAL/TRIGEN HOLDINGS, LLC

By: _____
Name:
Title:

OSMOTICA PHARMACEUTICAL US LLC

By: _____
Name:
Title:

VERTICAL/TRIGEN MIDCO, LLC

By: _____
Name:
Title:

VERTICAL/TRIGEN OPCO, LLC

By: _____
Name:
Title:

VERTICAL PHARMACEUTICALS, LLC

By: _____
Name:
Title:

TRIGEN LABORATORIES, LLC

By: _____
Name:
Title:

RVL PHARMACEUTICALS, INC.

By: _____
Name:
Title:

RVL PHARMACY, LLC

By: _____
Name:
Title:

ADMINISTRATIVE AGENT:

CIT BANK, N.A., as Administrative Agent and Swingline Lender

By: _____
Name:
Title:

LENDERS:

CIT BANK, N.A., as a Lender and Joint Lead Arranger

By: _____
Name:
Title:

FIFTH THIRD BANK, as a Lender, Issuing Bank and Joint Lead Arranger

By: _____
Name:
Title:

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND, as a Lender and Co-Syndication Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

SILICON VALLEY BANK, as a Lender and Joint Lead Arranger

By: _____
Name:
Title:

HANCOCK WHITNEY BANK, as a Lender and Co-Syndication Agent

By: _____
Name:
Title:

REGIONS BANK, as a Lender and Co-Syndication Agent

By: _____
Name:
Title:

CADENCE BANK, as a Lender

By: _____
Name:
Title:

CITIZENS BANK, NATIONAL ASSOCIATION,
as a Lender

By: _____
Name:
Title:

SANTANDER, as a Lender

By: _____
Name:
Title:

ANNALY MIDDLE MARKET LENDING LLC, as a Lender

By: _____
Name:
Title:

ALLSTATE INSURANCE COMPANY, as a Lender

By: _____
Name:
Title:

ALLSTATE LIFE INSURANCE COMPANY, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND IV, LTD, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND V, LTD, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND VIII, LTD, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND VII, LTD, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND XI, LTD, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND X, LTD, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND XI, LTD, as a Lender

By: _____
Name:
Title:

IVY HILL MIDDLE MARKET CREDIT FUND XII, LTD, as a Lender

By: _____
Name:
Title:

MONROE CAPITAL MML CLO 2017-2, LTD., as a Lender

By: _____
Name:
Title:

MONROE CAPITAL MML CLO VII LTD., as a Lender

By: _____
Name:
Title:

ANNEX A
(Deletions and Insertions to Existing Credit Agreement)

(attached)

Exhibit 21.1

Osmotica Pharmaceuticals plc

Subsidiary	State or Other Jurisdiction of Organization
Osmotica Holdings US LLC	Delaware
Osmotica Kereskedelmi es Szolgaltato Kft	Hungary
Osmotica Pharmaceutical Corp.	Delaware
RVL Pharmaceuticals, Inc.	Delaware
Osmotica Argentina, S.A.	Argentina
Valkyrie Group Holdings, Inc.	Delaware
Vertical/Trigen Holdings, LLC(1)	Delaware
Osmotica Pharmaceutical US, LLC	Delaware
Vertical/Trigen Opco, LLC	Delaware
Trigen Laboratories, LLC	Delaware
Vertical Pharmaceuticals, LLC	Delaware

(1) Vertical/Trigen Holdings, LLC is jointly-owned by Valkyrie Group Holdings, Inc. and Osmotica Pharmaceutical Corp.

Exhibit 23.1

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. 333-236193), and
(2) Registration Statement (Form S-8 No. 333-228045;

of our report dated March 30, 2021, with respect to the consolidated financial statements of Osmotica Pharmaceuticals plc included in this Annual Report (Form 10-K) of Osmotica Pharmaceuticals plc for the year ended December 31, 2020.

/s/Ernst & Young LLP

Iselin, New Jersey
March 30, 2021

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Brian Markison, certify that:

1. I have reviewed this annual report on Form 10-K of Osmotica Pharmaceuticals plc;

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: March 30, 2021

/s/ Brian Markison
Name: Brian Markison
Title: Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Andrew Einhorn, certify that:

1. I have reviewed this annual report on Form 10-K of Osmotica Pharmaceuticals plc;

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; and5. 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: March 30, 2021

/s/ Andrew Einhorn
Name: Andrew Einhorn
Title: Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
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 of Osmotica Pharmaceuticals plc (the "Company") on Form 10-K for the year ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Brian Markison, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 30, 2021

/s/ Brian Markison
Brian Markison
Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
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 of Osmotica Pharmaceuticals plc (the “Company”) on Form 10-K for the year ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Andrew Einhorn, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 30, 2021

/s/ Andrew Einhorn
Andrew Einhorn
Chief Financial Officer
(Principal Financial Officer)