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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2026

OR

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

For the transition period from ________________ to ______________________

Commission file number: 001-38738

ETON PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**37-1858472**
(State of incorporation)	**(I.R.S. Employer Identification Number)**

21925 W. Field Parkway, Suite 235
Deer Park, Illinois 60010-7278
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: (847) 787-7361

Securities registered pursuant to Section 12(b) of the Act	Trading Symbol	Name of each exchange on which registered
Common stock, $0.001 par value per share	ETON	Nasdaq Global Market

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 time that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

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

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

As of August 11, 2026, Eton Pharmaceuticals, Inc. had outstanding 28,583,135 shares of common stock, $0.001 par value.

Eton Pharmaceuticals, Inc.

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

Eton Pharmaceuticals, Inc.
Condensed Balance Sheets
(in thousands, except share and per share amounts)

	June 30, 2026 (Unaudited)	December 31, 2025
Assets		
Current assets:		
Cash and cash equivalents	$ 26,845	$ 25,942
Accounts receivable, net	24,886	11,757
Inventories, net	10,143	15,419
Prepaid expenses and other current assets	6,725	7,463
Total current assets	**68,599**	**60,581**
Property and equipment, net	352	326
Intangible assets, net	45,678	30,878
Operating lease right-of-use assets, net	1,114	310
Other long-term assets, net	64	19
Total assets	**$ 115,807**	**$ 92,114**
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 14,405	$ 10,976
Short-term debt, net of debt discount	8,825	8,789
Accrued Medicaid rebates	10,969	9,317
Accrued liabilities	10,925	9,408
Total current liabilities	**45,124**	**38,490**
Long-term debt, net of current portion and debt discount and accrued exit fees	19,078	21,769
Operating lease liabilities, net of current portion	1,083	460
Other long-term liabilities	3,937	5,241
Total liabilities	**69,222**	**65,960**
Commitments and contingencies (Note 12)		
Stockholders' equity		
Common stock, $0.001 par value; 50,000,000 shares authorized; 28,289,941 and 27,047,061 shares issued and outstanding at June 30, 2026 and December 31, 2025, respectively	28	27
Additional paid-in capital	145,919	138,621
Accumulated deficit	(99,362)	(112,494)
Total stockholders' equity	**46,585**	**26,154**
Total liabilities and stockholders' equity	**$ 115,807**	**$ 92,114**

The accompanying notes are an integral part of these condensed financial statements.

Eton Pharmaceuticals, Inc.
Condensed Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	For the three months ended		For the six months ended	
	June 30, 2026	June 30, 2025	June 30, 2026	June 30, 2025
Revenues:				
Product sales, net	$ 37,589	$ 18,928	$ 61,855	$ 32,924
Licensing revenue	—	—	—	3,286
Total net revenues	**37,589**	**18,928**	**61,855**	**36,210**
Cost of sales:				
Product sales and royalties, net	12,176	7,004	21,707	13,600
Licensing revenue	—	—	—	825
Total cost of sales	**12,176**	**7,004**	**21,707**	**14,425**
Gross profit	**25,413**	**11,924**	**40,148**	**21,785**
Operating expenses:				
Research and development	993	3,712	2,868	4,873
General and administrative	11,626	9,687	22,072	18,857
Total operating expenses	**12,619**	**13,399**	**24,940**	**23,730**
Income (loss) from operations	**12,794**	**(1,475)**	**15,208**	**(1,945)**
Other expense:				
Interest and other expense, net	(1,076)	(1,044)	(1,916)	(2,072)
Income (loss) before income tax expense	**11,718**	**(2,519)**	**13,292**	**(4,017)**
Income tax expense	140	66	160	140
Net income (loss)	**$ 11,578**	**$ (2,585)**	**$ 13,132**	**$ (4,157)**
Net income (loss) per share, basic	**$ 0.42**	**$ (0.10)**	**$ 0.48**	**$ (0.15)**
Weighted average number of common shares outstanding, basic	**27,642**	**26,893**	**27,444**	**26,889**
Net income (loss) per share, diluted	**$ 0.35**	**$ (0.10)**	**$ 0.41**	**$ (0.15)**
Weighted average number of common shares outstanding, diluted	**32,787**	**26,893**	**32,298**	**26,889**

The accompanying notes are an integral part of these condensed financial statements.

Eton Pharmaceuticals, Inc.
Condensed Statements of Stockholders' Equity
For the three months ended June 30, 2026 and 2025
(in thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balances at March 31, 2026	**27,359,791**	**$ 27**	**$ 141,528**	**$ (110,940)**	**$ 30,615**
Stock-based compensation	—	—	1,468	—	1,468
Stock option exercises and vesting of restricted stock	612,903	1	2,653	—	2,654
Exercise of warrants, net of shares withheld	296,215	—	—	—	—
Shares issued under employee stock purchase plan (ESPP)	21,032	—	270	—	**270**
Net income	—	—	—	11,578	11,578
Balances at June 30, 2026	**28,289,941**	**$ 28**	**$ 145,919**	**$ (99,362)**	**$ 46,585**

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balances at March 31, 2025	**26,817,535**	**$ 27**	**$ 133,888**	**$ (109,465)**	**$ 24,450**
Stock-based compensation	—	—	2,096	—	2,096
Net loss	—	—	—	(2,585)	(2,585)
Balances at June 30, 2025	**26,817,535**	**$ 27**	**$ 135,984**	**$ (112,050)**	**$ 23,961**

The accompanying notes are an integral part of these condensed financial statements.

Eton Pharmaceuticals, Inc.
Condensed Statements of Stockholders' Equity
For the six months ended June 30, 2026 and 2025
(in thousands, except share amounts)
(Unaudited)

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
Balances at December 31, 2025	**27,047,061**	**$ 27**	**$ 138,621**	**$ (112,494)**	**$ 26,154**
Stock-based compensation	—	—	2,986	—	2,986
Stock option exercises and vesting of restricted stock	925,633	1	4,042	—	4,043
Exercise of warrants, net of shares withheld	296,215	—	—	—	—
Shares issued under employee stock purchase plan (ESPP)	21,032	—	270	—	270
Net income	—	—	—	13,132	13,132
Balances at June 30, 2026	**28,289,941**	**$ 28**	**$ 145,919**	**$ (99,362)**	**$ 46,585**

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
Balances at December 31, 2024	**26,709,084**	**$ 27**	**$ 132,294**	**$ (107,893)**	**$ 24,428**
Stock-based compensation	—	—	3,296	—	3,296
Stock option exercises and vesting of restricted stock	108,451	—	394	—	394
Net loss	—	—	—	(4,157)	(4,157)
Balances at June 30, 2025	**26,817,535**	**$ 27**	**$ 135,984**	**$ (112,050)**	**$ 23,961**

The accompanying notes are an integral part of these condensed financial statements.

Eton Pharmaceuticals, Inc.
Condensed Statements of Cash Flows
(In thousands)
(Unaudited)

	Six months ended June 30, 2026	Six months ended June 30, 2025
Cash flows from operating activities		
Net income (loss)	$ 13,132	$ (4,157)
Adjustments to reconcile net income (loss) to net cash from operating activities:		
Stock-based compensation	2,986	3,296
Depreciation and amortization	2,517	2,018
Inventory step-up	1,000	2,349
Excess and obsolete inventory reserve	581	110
Debt discount amortization and non-cash interest expenses	278	342
Non-cash lease expense	45	30
Changes in operating assets and liabilities:		
Accounts receivable	(13,129)	(9,092)
Inventories	4,725	(11,019)
Prepaid expenses and other assets	739	672
Accounts payable	3,429	7,970
Accrued Medicaid rebates	1,652	9,359
Accrued liabilities	704	(1,201)
Other non-current assets and liabilities	(3,999)	9,372
Net cash from operating activities	**14,660**	**10,049**
Cash flows used in investing activities		
Purchases of product license rights	(15,000)	—
Purchases of property and equipment	(70)	—
Net cash used in investing activities	**(15,070)**	**—**
Cash flows from financing activities		
Proceeds from stock option exercises	4,043	394
Proceeds from shares issued under the ESPP	270	—
Repayment of long-term debt	(3,000)	—
Net cash from financing activities	**1,313**	**394**
Change in cash and cash equivalents	**903**	**10,443**
Cash and cash equivalents at beginning of period	25,942	14,936
Cash and cash equivalents at end of period	$ 26,845	$ 25,379
Supplemental disclosures of cash flow information		
Cash paid for interest	$ 1,697	$ 852
Cash paid for income taxes	$ 85	$ 89

The accompanying notes are an integral part of these condensed financial statements.

Eton Pharmaceuticals, Inc.
Notes to Condensed Financial Statements
(in thousands, except share and per share amounts)
(Unaudited)

Note 1 — Company Overview

The Company is an innovative pharmaceutical company focused on developing and commercializing treatments for rare diseases. The Company currently has eleven commercial rare disease products: INCRELEX®, HEMANGEOL®, ALKINDI SPRINKLE®, KHINDIVI™, DESMODA™, GALZIN®, PKU GOLIKE®, IMPAVIDO®, Carglumic Acid, Betaine Anhydrous and Nitisinone, with IMPAVIDO® scheduled for commercialization in September 2026. The Company has four additional product candidates in late-stage development: Amglidia®, ET-700, ET-800 and ZENEO® hydrocortisone autoinjector.

Note 2 — Summary of Significant Accounting Policies

Basis of Presentation

The Company has prepared the accompanying condensed financial statements in accordance with accounting principles generally accepted in the United States ("GAAP"). Certain prior period amounts have been reclassified to conform to current year presentation in the condensed financial statements and notes to financial statements.

Unaudited Interim Financial Information

The accompanying interim condensed financial statements are unaudited and have been prepared on the same basis as the audited annual financial statements of the Company and, in the opinion of management, reflect all adjustments necessary for the fair presentation of the Company's financial position as of June 30, 2026, and the results of its operations and its cash flows for the periods ended June 30, 2026 and 2025. The financial data and other information disclosed in these notes related to the three and six months ended June 30, 2026 and 2025 are also unaudited. The interim financial statements are condensed and generally do not repeat the disclosures in the annual financial statements. As such, the interim financial statements herein should be read in conjunction with the Company's latest annual financial statements filed with the U.S. Securities and Exchange Commission ("SEC") on Form 10-K on March 19, 2026. The results for the three and six months ended June 30, 2026, are not necessarily indicative of results to be expected for the year ending December 31, 2026, any other interim periods, or any future year or period.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Significant estimates and assumptions reflected in these financial statements include, but are not limited to, Medicaid program rebates, valuation of inventories, useful lives of assets and the recoverability of long-lived assets, valuation of deferred tax assets, and the valuation of common stock, stock options, warrants, and restricted stock units ("RSUs"). Estimates are periodically reviewed in light of changes in circumstances, facts and experience. Changes in estimates are recorded in the period in which they become known. Actual results could differ from those estimates or assumptions.

Acquisitions

The Company accounts for business acquisitions using the acquisition method of accounting. Under this method of accounting, assets acquired and liabilities assumed are recorded at their respective fair values at the date of the acquisition. When determining the fair values of assets acquired and liabilities assumed, management makes significant estimates and assumptions. The Company's estimates of fair value are based upon assumptions believed to be reasonable but that are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. Any excess of the purchase price over the fair value of the net assets acquired is recognized as goodwill.

The Company accounts for acquisitions that do not meet the definition of a business as an asset acquisition. The determination of whether a transaction represents a business combination or an asset acquisition requires significant judgment, including an evaluation of whether the acquired asset includes a substantive process and whether substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar assets. For transactions accounted for as asset acquisition, the Company allocates the purchase price, including transaction costs, to the individual assets acquired and liabilities assumed on a relative fair value basis. This allocation requires management to make significant estimates and assumptions, including the selection of valuation methodologies, discount rates, projected cash flows, and useful lives of acquired assets. Changes in these assumptions could result in materially different allocations of the purchase price, which may impact future amortization expense. In addition, because goodwill is not recognized in asset acquisitions, the assignment of value to identifiable intangible assets may be greater than in a business combination.

The Company amortizes finite-lived intangible assets over their estimated useful lives and evaluates indefinite-lived assets for impairment. The determination of useful lives and the timing of impairment assessments requires significant judgment and may materially affect the Company's results of operations. Critical estimates in valuing certain of the intangible assets acquired include:

Note 2 — Summary of Significant Accounting Policies (continued)

- future expected cash flows from customer contracts and license agreements;
- historical and expected customer attrition rates and anticipated growth in revenues from acquired customers; and
- discount rates.

Segment Information

The Company operates the business on the basis of a single reportable segment, which includes eleven commercial rare disease products: INCRELEX®, HEMANGEOL®, ALKINDI SPRINKLE®, KHINDIVI™, DESMODA™, GALZIN®, PKU GOLIKE®, IMPAVIDO®, Carglumic Acid, Betaine Anhydrous and Nitisinone. The Company primarily derives revenues from product sales to a specialty pharmacy customer, AnovoRx, who then provides order fulfillment, inventory storage and distribution services. The Company's chief operating decision-maker ("CODM") is the Chief Executive Officer, who evaluates the Company's financial performance and results of operations as a single operating segment. The CODM reviews net income or loss as a measure of segment profit or loss in assessing performance and allocating resources. Segment revenues, expenses and profit or loss is reported on the Condensed Statements of Operations. Additionally, the measure of segment assets is reported on the Company's Condensed Balance Sheets as total assets.

The Company's revenues and its accounts receivable balances are highly concentrated and consist of sales to and amounts due from AnovoRx for the Company's INCRELEX®, HEMANGEOL®, ALKINDI SPRINKLE®, KHINDIVI™, DESMODA™, GALZIN®, Carglumic Acid, Betaine Anhydrous and Nitisinone products, as well as from Pentec Health for sales of the Company's PKU GOLIKE® product. For the six months ended June 30, 2026 and 2025, AnovoRx product sales represented 90.4% and 92.0% of net product revenues, respectively. As of June 30, 2026 and December 31, 2025, AnovoRx product sales represented 88.1% and 88.4% of net accounts receivable. During the three and six months ended June 30, 2026 and 2025, the Company's revenues from external customers were entirely derived from U.S. operations. As of June 30, 2026 and December 31, 2025, all long-lived assets were domiciled within the U.S.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. All cash and cash equivalents are held in U.S. financial institutions or invested in short-term U.S. treasury bills or high-grade, government money market funds. From time to time, amounts deposited with its bank exceed federally insured limits. The Company believes the associated credit risk to be minimal.

Accounts Receivable

Accounts receivable are recorded at the invoiced amount and are non-interest bearing. Accounts receivable are recorded net of allowances for credit losses and cash discounts for prompt payment. The Company considers historical collection rates and the current financial status of its customers, as well as macroeconomic and industry-specific factors when evaluating potential credit losses. The Company's accounts receivable balances are highly concentrated with a select number of customers, consisting primarily of specialty pharmacies. Given the size and creditworthiness of these customers, we have not experienced and do not expect to experience material credit losses.

Inventories

The Company values its inventories at the lower of cost or net realizable value using the first-in, first-out method of valuation. The Company reviews its inventories for potential excess or obsolete issues on an ongoing basis and records a write-down if an impairment is identified. As of June 30, 2026 and December 31, 2025, inventories consisted of purchased finished goods, semi-finished goods and raw materials.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation of property and equipment is computed utilizing the straight-line method based on the following estimated useful lives. Computer hardware and software is depreciated over three years. Equipment, furniture and fixtures is depreciated over five years. Leasehold improvements are amortized over their estimated useful lives or the remaining lease term, whichever is shorter. Construction in progress is capitalized but not depreciated until it is placed into service.

Intangible Assets

The Company has historically capitalized payments it makes for licensed products when the payment is based on Food and Drug Administration ("FDA") approval or near-term approval for the product and the cost is recoverable based on expected future cash flows from the product. In January 2026, the Company purchased the licensing rights to a product that has not received FDA approval and accordingly, is classified as In-Process Research and Development ("IPR&D") within Intangible assets, net on the Company's Condensed Balance Sheet as of June 30, 2026. In February 2026, the Company entered into a licensing agreement to acquire the U.S. rights to HEMANGEOL® (propranolol) oral solution from Pierre Fabre Medicament Sas ("Pierre Fabre"), in which the Company paid Pierre Fabre $14,000 upfront. The Company accounted for this transaction as an asset acquisition, and after purchase accounting adjustments for inventory step-up costs of $1,131, and including acquisition related expenses of $100, the Company recorded $12,969 for the HEMANGEOL® intangible asset which is being amortized over its useful life of ten years. In May 2026, the Company entered into a licensing agreement to acquire the U.S right to IMPAVIDO® (miltefosine) oral capsules from Knight Therapeutics, Inc., in which the Company will pay $4,250 in fixed fees. The Company capitalized $3,304 in intangible assets associated with IMPAVIDO®, which is being amortized over its useful life of ten years. The Company accounted for this transaction as an asset acquisition

(in thousands, except share and per share amounts)

Note 2 — Summary of Significant Accounting Policies (continued)

Intangible assets are amortized on a straight-line basis over the estimated useful life of the product commencing on the approval date or the product acquisition date in accordance with ASC *350* — Intangibles - Goodwill and Other. The following table presents the Company's intangible assets as of June 30, 2026 and December 31, 2025:

Intangible assets as of June 30, 2026	Useful Life (In years)	Purchase Date	Purchase Price	Accumulated Amortization	Carrying Value
Carglumic Acid	10	November 2021	$ 3,250	$ 1,517	$ 1,733
Betaine	5	September 2022	2,125	1,611	514
Nitisinone	5	October 2023	650	357	293
GoLike	10	March 2024	1,868	420	1,448
Increlex	10	December 2024	21,250	3,263	17,987
Galzin	10	December 2024	8,119	1,218	6,901
IPR&D asset		January 2026	1,000	—	1,000
Hemangeol	10	February 2026	12,969	432	12,537
Impavido	10	May 2026	3,304	39	3,265
			$ 54,535	$ 8,857	$ 45,678

Intangible assets as of December 31, 2025	Useful Life (In years)	Purchase Date	Purchase Price	Accumulated Amortization	Carrying Value
Carglumic Acid	10	November 2021	$ 3,250	$ 1,354	$ 1,896
Betaine	5	September 2022	2,125	1,399	726
Nitisinone	5	October 2023	650	292	358
GoLike	10	March 2024	1,868	327	1,541
Increlex	10	December 2024	21,250	2,200	19,050
Galzin	10	December 2024	8,119	812	7,307
			$ 37,262	$ 6,384	$ 30,878

The Company recorded $2,473 and $2,002 of amortization expense for the six months ended June 30, 2026 and 2025, respectively. The table below shows the estimated remaining amortization for these products for each of the five years from 2026 to 2030 and thereafter.

Year	Amortization Expense
Remainder of 2026	$ 2,816
2027	5,707
2028	5,374
2029	5,276
2030	5,276
Thereafter	21,229
Total estimated amortization expense	$ 45,678

Impairment of Long-Lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the Company’s Condensed Statements of Operations for the amount by which the carrying amount of the asset exceeds the fair value of the asset. No impairment was recognized during the six-month periods ended June 30, 2026 or 2025.

Deferred Financing Costs, Debt Discount and Detachable Debt-Related Warrants

Costs incurred to issue debt are deferred and recorded as a reduction to the debt balance in the accompanying Condensed Balance Sheets. The Company amortizes these costs over the expected term of the related debt under the effective interest method. Debt discounts related to the relative fair value of warrants issued in conjunction with debt are also recorded as a reduction to the debt balance and accreted over the expected term into interest expense using the effective interest method.

Note 2 — Summary of Significant Accounting Policies (continued)

Leases

The Company accounts for leases in accordance with ASC Topic 842 — Leases. The Company reviews all relevant facts and circumstances of a contract to determine if it is a lease whereby the terms of the agreement convey the right to control the direct use and receive substantially all the economic benefits of an identified asset for a period of time in exchange for consideration. The associated right-of-use assets and lease liabilities are recognized at lease commencement. The Company measures lease liabilities based on the present value of the lease payments over the lease term discounted using the rate it would pay on a loan with the equivalent payments and term for the lease. The Company does not include the impact for lease term options that would extend or terminate the lease unless it is reasonably certain that it will exercise any such options. The Company accounts for the lease components separately from non-lease components for its operating leases.

The Company measures right-of-use assets based on the corresponding lease liabilities adjusted for (i) any prepayments made to the lessor at or before the commencement date, (ii) initial direct costs it incurs, and (iii) any incentives under the lease. In addition, the Company evaluates the recoverability of its right-of-use assets for possible impairment in accordance with its long-lived assets policy.

Operating leases are reflected on the Condensed Balance Sheets as operating lease right-of-use assets, current accrued liabilities and long-term operating lease liabilities. The Company does not have any finance leases as of June 30, 2026 and December 31, 2025.

The Company commences recognizing operating lease expense when the lessor makes the underlying asset available for use by the Company and the operating lease expense is recognized on a straight-line basis over the term of the lease. Variable lease payments are expensed as incurred.

The Company does not recognize right-of-use assets or lease liabilities for leases with a term of twelve months or less; such lease costs are recorded in the Condensed Statements of Operations on a straight-line basis over the lease term.

Patent Costs

All patent-related costs incurred in connection with filing and prosecuting patent applications are expensed as incurred due to the uncertainty about the successful award of a patent and the recovery of the expenditure. Amounts incurred are classified as general and administrative expenses.

Concentrations of Credit Risk, Sources of Supply and Significant Customers

The Company is subject to credit risk for its cash and cash equivalents, which are invested in money market funds and U.S. treasury bills from time to time. The Company maintains its cash and cash equivalent balances with one major commercial bank and the deposits held with the financial institution exceed the amount of insurance provided on such deposits and are exposed to credit risk in the event of a default by the financial institution holding its cash and cash equivalents to the extent recorded on the Condensed Balance Sheets. The Company believes the associated credit risk to be minimal.

The Company is dependent on third-party suppliers for its products and product candidates. In particular, the Company relies, and expects to continue to rely, on a small number of suppliers to manufacture key chemicals, approved products and process its product candidates as part of its development programs. These programs could be adversely affected by a significant interruption in the manufacturing process.

The Company is also subject to credit risk from its accounts receivable related to product sales as it extends credit based on an evaluation of the customer’s financial condition, and collateral is not required. The Company's accounts receivables are evaluated to determine if any allowance should be recorded based on consideration of the current economic environment, expectations of future economic conditions, specific circumstances and the Company's historical collection experience. Additionally, management monitors its exposure to accounts receivable by periodically evaluating the collectability of the account receivable based on a variety of factors including the length of time the receivables are past due, the financial health of the customer and any prior customer credit loss experience. Based upon the review of these factors, the Company recorded no allowance for credit losses at June 30, 2026 or December 31, 2025.

Revenue Recognition for Contracts with Customers

The Company accounts for contracts with its customers in accordance with ASC 606 — Revenue from Contracts with Customers. ASC 606 applies to all contracts with customers, except for contracts that are within the scope of other standards. Under ASC 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, the entity performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. Arrangements that include rights to additional goods or services that are exercisable at a customer’s discretion are generally considered options. The Company assesses whether these options provide a material right to the customer and, if so, they are considered performance obligations. The exercise of a material right is accounted for as a contract modification for accounting purposes.

Note 2 — Summary of Significant Accounting Policies (continued)

The Company recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) each performance obligation is satisfied at a point in time. For the three and six months ended June 30, 2026 and 2025, all revenues recognized in the Condensed Statements of Operations were point in time sales to the Company's customers.

Milestone Payments – If a commercial contract arrangement includes development and regulatory milestone payments, the Company will evaluate whether the milestone conditions have been achieved and if it is probable that a significant revenue reversal would not occur before recognizing the associated revenue. Milestone payments that are not within the Company's control or the licensee's control, such as regulatory approvals, are generally not considered probable of being achieved until those approvals are received.

Royalties – For arrangements that include sales-based royalties, including milestone payments based on a level of sales, which are the result of a customer-vendor relationship and for which the license is deemed to be the predominant item to which the royalties relate, the Company will recognize revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied or partially satisfied.

The Company sells its products to pharmacy distributor customers which provide order fulfillment and inventory storage/distribution services. The Company uses a third-party logistics ("3PL") vendor to process and fulfill orders and has concluded it is the principal in the sales to wholesalers because it controls access to the 3PL vendor services rendered and directs the 3PL vendor activities.

The Company bills for its products at the initial product list price which are subject to offsets for patient co-pay assistance and potential state Medicaid and other government program rebates which are recorded as a reduction of net revenues at the date of sale/shipment. Upon recognition of revenue from product sales, the estimated amounts of chargebacks, prompt pay discounts and state Medicaid and other government program rebates are in sales reserves, accrued liabilities and net accounts receivable.

The Company estimates the transaction price when it receives each purchase order taking into account the expected reductions of the selling price initially billed to the wholesaler/distributor arising from all of the above factors. The Company has developed estimates for future returns and chargebacks and the impact of other discounts and fees it pays, The Company's product sales are not subject to returns.

The Company stores its products inventory at its pharmacy distributor customer locations, and sales are recorded when stock is pulled and shipped to fulfill specific patient orders.

The state Medicaid and other government program rebates and related liabilities are estimated based on monthly sales, historical experience of claims submitted by the various states and jurisdictions, historical rebate rates and estimated lag time of the rebate invoices.

Cost of Sales

Cost of product sales consists of the profit-sharing and royalty fees with the Company's product licensing and development partners, the purchase costs for finished products from third-party manufacturers, freight and handling/storage from the Company's 3PL logistics service providers and inventory step-up expense, and amortization expense of certain intangible assets. The costs of sales for profit-sharing, royalty fees, purchased finished products, and the associated inbound freight expense are recorded when the associated product sale revenue is recognized in accordance with the terms of shipment to customers while outbound freight and handling/storage fees charged by the 3PL service provider are expensed as they are incurred. Intangible assets are amortized on a straight-line basis over the estimated useful life of the product. Cost of product sales also reflects any write-downs or reserve adjustments for the Company's inventories.

Licensing cost of sales may consist of supply agreements and profit-sharing agreements associated with the Company's sale of its product licenses to customers. The costs of sales for profit-sharing agreements are recognized upon the achievement of certain development and commercial milestones.

Research and Development Expenses

Research and development ("R&D") expenses include both internal R&D activities and external contracted services. Internal R&D activity expenses include salaries, benefits and stock-based compensation and other costs to support the Company's R&D operations. External contracted services include product development efforts such as certain product licensor milestone payments, clinical trial activities, manufacturing and control-related activities and regulatory costs. R&D expenses are charged to operations as incurred. The Company reviews and accrues R&D expenses based on services performed and may, from time to time, make estimates of those costs applicable as to the stage of completion of each project. Actual results could differ from the Company's estimates. Nonrefundable advance payments for goods or services to be received in the future for use in R&D activities are recorded as prepaid expenses and are expensed as the related goods are delivered or the services are performed.

Eton Pharmaceuticals, Inc.
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Note 2 — Summary of Significant Accounting Policies (continued)

Income (Loss) Per Share

Basic net income (loss) per common share is computed by dividing net income (loss) attributable to common stockholders for the period by the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share is computed by dividing the net income (loss) attributable to common stockholders for the period by the weighted average number of common and common equivalent shares, such as unvested restricted stock, stock options and warrants that are outstanding during the period. Common stock equivalents are excluded from the computation when their inclusion would be anti-dilutive. No such adjustments were made for the three and six months ended June 30, 2025 as including the effects of common stock equivalents in the diluted earnings per share calculation would have been anti-dilutive. See Note 8 for further information.

Income Taxes

The Company accounts for income taxes under the provisions of ASC 740 - Income Taxes. As part of the process of preparing the Company's financial statements, the Company must estimate the actual current tax liabilities and assess temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the Condensed Balance Sheets. The Company must assess the likelihood that the deferred tax assets will be recovered from future taxable income and, to the extent the Company believes that recovery is not likely, a valuation allowance must be established. To the extent the Company establishes a valuation allowance or increase or decrease to this allowance in a period, the impact will be included in income tax expense in the Condensed Statements of Operations. As of June 30, 2026 and December 31, 2025, the Company has established a 100% valuation reserve against its deferred tax assets. See Note 9 for further information.

Stock-Based Compensation

The Company accounts for stock-based compensation under the provisions of ASC 718 Compensation – Stock Compensation. The guidance under ASC 718 requires companies to estimate the fair value of the stock-based compensation awards on the date of grant and record expense over the related service periods, which are generally the vesting period of the equity awards. Compensation expense is recognized over the period during which services are rendered by consultants and non-employees until completed.

The Company estimates the fair value of stock-based option awards using the Black-Scholes option-pricing model ("BSM"). The BSM requires the input of subjective assumptions, including the expected stock price volatility, the calculation of expected term, forfeitures and the fair value of the underlying common stock on the date of grant, among other inputs. The risk-free interest rate was determined from the implied yields for zero-coupon U.S. government issues with a remaining term approximating the expected life of the options or warrants. Dividends on common stock are assumed to be zero for the BSM valuation of the stock options. The expected term of stock options granted is based on vesting periods and the contractual life of the options. Expected volatilities are based on the Company's historical volatility subsequent to our initial public offering ("IPO"), which we believe represents the most accurate basis for estimating expected future volatility under the current conditions. The Company accounts for forfeitures as they occur.

Fair Value Measurements

We measure certain of our assets and liabilities at fair value. Fair value represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value accounting requires characterization of the inputs used to measure fair value into a three-level fair value hierarchy as follows:

Level 1 — Inputs based on quoted prices in active markets for identical assets or liabilities. An active market is a market in which transactions occur with sufficient frequency and volume to provide pricing information on an ongoing basis.

Level 2 — Observable inputs that reflect the assumptions market participants would use in pricing the asset or liability developed based on market data obtained from sources independent from the entity.

Level 3 — Unobservable inputs that reflect the entity's own assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available.

Fair value measurements are classified based on the lowest level of input that is significant to the measurement. The Company's assessment of the significance of a particular input to the fair value measurement requires judgment, which may affect the valuation of the assets and liabilities and their placement within the fair value hierarchy levels. The determination of the fair values stated below take into account the market for the Company's financials, assets and liabilities, the associated credit risk and other factors as required. The Company considers active markets as those in which transactions for the assets or liabilities occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

The Company's financial instruments include cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, and debt obligation. The carrying amounts of these financial instruments approximate their fair values due to the short-term maturities of these instruments. Based on borrowing rates currently available to the Company, the carrying value of the debt obligation approximates its fair value.

(in thousands, except share and per share amounts)

Recent Accounting Pronouncements

In November 2024, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") ASU 2024-03, *Income Statement-Reporting Comprehensive Income-Expense Disaggregation Disclosures* (Subtopic 220-40). Additionally, in January 2025, the FASB issued ASU 2025-01 to clarify the effective date of ASU 2024-03. The standard provides guidance to expand disclosures related to the disaggregation of income statement expenses. The standard requires, in the notes to the financial statements, disclosure of specified information about certain costs and expenses, which includes purchases of inventory, employee compensation, depreciation and intangible asset amortization included in each relevant expense caption. This guidance is effective for fiscal years beginning after December 15, 2026, and interim periods within annual reporting periods beginning after December 15, 2027, on a retrospective or prospective basis, with early adoption permitted. The Company is currently evaluating the effect of this new guidance on its condensed financial statements.

In December 2025, the FASB issued ASU 2025-12, *Codification Improvements,* which makes narrow-scope amendments to various topics within the Accounting Standards Codification to clarify and improve existing guidance. This guidance is effective for fiscal years beginning after December 15, 2026, and interim periods within annual reporting periods beginning after January 1, 2027, on a retrospective or prospective basis, with early adoption permitted. The Company is currently evaluating the effect of this new guidance on its condensed financial statements.

Note 3 — Long-Term Debt

SWK Loan

In November 2019, the Company entered into a credit agreement (the "SWK Credit Agreement") with SWK Funding LLC ("SWK"), which was subsequently acquired in 2026 by Runway Growth Finance Corp ("Runway Growth Finance"). The SWK Credit Agreement provided for up to $10,000 in debt financing. As a result of subsequent amendments to the SWK Credit Agreement, the Company expanded its credit facility to $30,000, extended the facility's maturity to three years from closing with a loan maturity date of December 17, 2027, and reduced the facility's annual interest rate to Secured Overnight Financing Rate ("SOFR") plus 6.75%. In April 2026, the Company entered into a sixth amendment to its credit agreement with SWK. Under the amended terms of the SWK credit agreement, the credit facility was increased to $40,000, the interest rate was reduced from SOFR plus 6.75% to SOFR plus 6.55% with the SOFR floor reduced to 2.75% from the previous 5.0%. Further, the interest only period was extended to November 2026. There were no fees paid to SWK associated with the credit amendment and the amended credit agreement maturity date remained in December 2027.

Interest payments are payable quarterly, with quarterly principal payments of $3,000 due beginning in November 2026 with a final principal payment of $12,000 due at maturity in December 2027. The SWK Credit Agreement includes a 5.0% exit fee payable at maturity and this exit fee payable is being accreted to interest expense in the Company's Condensed Statement of Operations using the effective interest expense method. The SWK Credit Agreement contains a mandatory prepayment clause that can compel the Company to partially prepay the loan upon certain triggering events, which the Company has deemed to be remote. Borrowing under the SWK Credit Agreement is secured by the Company's assets, contains customary default provisions, which include limits on additional indebtedness. As of June 30, 2026 and December 31, 2025, the Company was in compliance with all financial covenants.

In June 2026, Runway Growth Finance exercised 51,239 common stock warrants at an exercise price of $5.86, exercised 18,141 common stock warrants at an exercise price of $6.62 and exercised 289,736 common stock warrants at an exercise price of $5.32. The weighted average fair market value of $31.19 was based on a ten-day weighted average closing price of the Company's closing common stock price, which resulted in a net cashless settlement of 296,215 shares issued of the Company's common stock. As of June 30, 2026, there are no outstanding common stock warrants.

During the six months ended June 30, 2026 and 2025, the Company recorded interest expense of $2,149 and $2,361, respectively, which included $278 and $342, respectively, of debt discount amortization and non-cash interest expense. The Company had accrued interest of $356 and $425 as of June 30, 2026 and December 31, 2025, respectively, which is included in accrued liabilities in the accompanying Condensed Balance Sheets.

The table below reflects the future payments for the SWK loan principal as of June 30, 2026.

		Amount
2026	$	3,000
2027		24,000
Total payments		27,000
Less: unamortized discount		(228)
Plus: accrued exit fees at June 30, 2026		1,131
Debt, net	$	27,903

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Note 4 — Property and Equipment

Property and equipment consist of the following:

	June 30, 2026	December 31, 2025
Computer hardware and software	$ 43	$ 200
Furniture and fixtures	159	265
Equipment	35	52
Leasehold improvements	230	295
Property and equipment, gross	466	812
Less: accumulated depreciation and amortization	(114)	(486)
Property and equipment, net	$ 352	$ 326

Depreciation expense for the six months ended June 30, 2026 and 2025 was $44 and $16, respectively. During the second quarter of 2026, the Company removed from property and equipment fully depreciated assets that are no longer in service.

Note 5 — Inventory

As of June 30, 2026 and December 31, 2025, inventory consisted of the following

	June 30, 2026	December 31, 2025
Raw materials	$ 690	$ 557
Semi-finished goods	5,495	9,431
Finished goods	4,848	6,630
Less: excess and obsolete inventory reserve	(890)	(1,199)
Inventory, net	$ 10,143	$ 15,419

Inventory reserves were $890 and $1,199 at June 30, 2026 and December 31, 2025, respectively.

Note 6 — Common Stock

The Company has 50,000,000 authorized shares of $0.001 par value common stock under its Amended and Restated Certificate of Incorporation.

During the six months ended June 30, 2026, the Company issued 925,633 shares of its common stock resulting from stock option exercises and vesting of restricted stock units under its 2018 Equity Incentive Plan as amended in December 2020 (the "2018 Plan"), 296,215 shares of its common stock resulting from the exercise of warrants and 21,032 shares of its common stock under the Company's 2018 Employee Stock Purchase Plan ("ESPP"). During the six months ended June 30, 2025, the Company issued 108,451 shares of its common stock resulting from stock option exercises under the 2018 Plan.

Note 7 — Share-Based Payment Awards

In November 2018, the Company's stockholders and board of directors approved the 2018 Plan which succeeded the 2017 Plan. The 2018 Plan was amended by the board of directors in December 2020. The Company has granted RSAs, stock options and RSUs for its common stock under the 2017 Plan and 2018 Plan as detailed in the tables below. There were 1,457,446 shares available for future issuance under the 2018 Plan as of June 30, 2026.

All stock options issued have been non-qualified stock options and the exercise price was the closing stock price of the Company's common stock on the date of grant. Non-qualified stock options typically have a ten-year life and non-qualified stock options that are expired, terminated, surrendered or canceled without having been fully exercised will be available for future awards under the 2018 Plan. In addition, the 2018 Plan provides that commencing January 1, 2019 through January 1, 2028, the share reserve will be increased by 4% of the total number of shares outstanding as of the preceding December 31, subject to a reduction at the discretion of the Company's board of directors. On January 1, 2025, the share reserve was increased by 1,068,323 shares based on the 26,709,084 shares of common stock outstanding at December 31, 2024. On January 1, 2026, the share reserve was increased by 1,081,882 shares based on the 27,047,061 shares of common stock outstanding at December 31, 2025.The exercise price for stock options granted is not less than the fair value of common stock as of the date of grant. The Company uses the closing stock price on the date of grant as the exercise price.

For the six months ended June 30, 2026 and 2025, the Company's total stock-based compensation expense was $2,986 and $3,296, respectively. Of these amounts, $2,887 and $3,214 were recorded in general and administrative ("G&A") expenses during the six months ended June 30, 2026 and 2025, respectively, and $99 and $82 were recorded in research and development expenses during the six months ended June 30, 2026 and 2025, respectively.

(in thousands, except share and per share amounts)

Note 7 — Share-Based Payment Awards (continued)

Stock Options

The following table summarizes stock option activity during the six months ended June 30, 2026:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Yrs)	Aggregate Intrinsic Value
Outstanding as of December 31, 2025	5,911,521	$ 5.35		
Issued	550,474	$ 16.96		
Exercised	(884,190)	$ 4.68		
Forfeited/Cancelled	(172,094)	$ 9.64		
Outstanding as of June 30, 2026	5,405,711	$ 6.51	6.0	$ 160,499
Options exercisable as of June 30, 2026	4,182,594	$ 5.22	5.2	$ 129,563

The aggregate intrinsic value of stock options is calculated as the difference between the exercise price of the stock options and the fair value of the Company's common stock at June 30, 2026 for those stock options that had strike prices lower than the fair value of the Company's common stock.

The assumptions used to calculate the estimated fair value of options granted during the six months ended June 30, 2026 and 2025 under the BSM were as follows:

	June 30, 2026	June 30, 2025
Expected dividends	—%	—%
Expected volatility	64%	65%
Risk-free interest rate	3.7 - 4.2%	3.9 - 4.7%
Expected term (in years)	6.3	6.0
Weighted average grant date fair value	$ 10.62	$ 8.43

Expected Term — The Company has opted to use the "simplified method" for estimating the expected term of options granted to employees and directors, whereby the expected term equals the arithmetic average of the vesting term and the original contractual term of the option (generally 10 years). The expected term of options granted to non-employees equals the contractual life of the options.

Expected Volatility — Expected volatilities are based on the Company's historical volatility subsequent to our IPO, which the Company's believes represent the most accurate basis for estimating expected future volatility under the current conditions.

Risk-Free Interest Rate — The risk-free rate assumption is based on the U.S. Treasury instruments with maturities similar to the expected term of the Company's stock options.

Expected Dividend — The Company has not issued any dividends in its history and does not expect to issue dividends over the life of the options and therefore has estimated the dividend yield to be zero.

Fair value of Common Stock —The Company uses the closing stock price on the date of grant for the fair value of the common stock.

Stock based compensation related to stock options was $1,864 and $1,756 for the six-month periods ended June 30, 2026 and 2025, respectively. As of June 30, 2026, there was a total of $7,983 of unrecognized compensation costs related to non-vested stock option awards, which will be recognized over a weighted average period of approximately 2.9 years.

During the six months ended June 30, 2026, the Company issued 884,190 shares of its common stock resulting from stock option exercises at a weighted average exercise price of $4.68 per share with an intrinsic value of $21,254. During the six months ended June 30, 2025, the Company issued 108,451 shares of its stock resulting from stock option exercises at a weighted average exercise price of $3.63 per share with an intrinsic value of $1,167.

Restricted Stock Units (RSUs)

The following table summarizes restricted stock unit activity during the six months ended June 30, 2026:

	Number of Units	Weighted Average Grant-Date Fair Value Per Unit
Outstanding and unvested as of December 31, 2025	278,501	$ 9.57
Granted	303,625	$ 16.14
Vested	(51,277)	$ 11.07
Forfeited	(52,515)	$ 14.57
Outstanding and unvested as of June 30, 2026	478,334	$ 13.03

(in thousands, except share and per share amounts)

Note 7 — Share-Based Payment Awards (continued)

Stock-based compensation expense related to RSUs was $1,002 and $1,582 for the six-month periods ended June 30, 2026 and 2025, respectively. As of June 30, 2026, there was $5,163 of unrecognized stock-based compensation expense related to unvested RSUs, which will be recognized over a weighted average period of approximately 3.1 years.

Employee Stock Purchase Plan

The ESPP provides for an initial reserve of 150,000 shares, and this reserve is automatically increased on January 1 of each year by the lesser of 1% of the outstanding shares of common stock at December 31 of the preceding year or 150,000 shares of common stock, subject to reduction at the discretion of the Company's board of directors. As of June 30, 2026, there were 954,655 shares available for issuance under the ESPP.

The annual offerings consist of two stock purchase periods, with the first purchase period ending in December and the second ending in June. The terms of the ESPP permit employees of the Company to use payroll deductions to purchase stock at a price per share that is at least the lesser of (1) 85% of the fair market value of a share of common stock on the first date of an offering or (2) 85% of the fair market value of a share of common stock on the date of purchase. After the offering period ends, subsequent twelve-month offering periods automatically commence over the term of the ESPP on the day that immediately follows the conclusion of the preceding offering, each consisting of two purchase periods approximately six months in duration. The terms of the ESPP provide a restart feature if the Company's stock price is lower at the end of a six-month period within the twelve-month offering period than it was at the beginning of the twelve-month offering period.

The Company recorded an expense of $120 and a credit to income of $42 related to the ESPP during the six-month periods ended June 30, 2026 and 2025, respectively. As of June 30, 2026 and December 31, 2025, the accompanying Condensed Balance Sheets include $53 and $45, respectively, in accrued liabilities for employee ESPP contributions.

Note 8 — Basic and Diluted Net Income (Loss) per Common Share

For the three and six months ended June 30, 2026 and 2025, basic and diluted net income (loss) per share is computed using the weighted average number of shares of common stock outstanding during the period and includes common stock equivalents (using the treasury stock and "if converted" method) from stock options, RSUs, ESPP and warrants. For the three and six months ended June 30, 2025, 7,425,645 and 7,183,998, respectively, in common stock equivalents are excluded from the calculation of diluted net loss per share because the effect was anti-dilutive. During the three and six months ended June 30, 2026 and 2025, included in the basic and diluted net income (loss) per share calculation were RSUs awarded to directors that had vested, but the issuance and delivery of the shares are deferred until the director retires from service as a director.

The following table shows the computation of basic and diluted net loss per common share:

	Three Months Ended		Six Months Ended	
	June 30, 2026	June 30, 2025	June 30, 2026	June 30, 2025
Net income (loss)	$ 11,578	$ (2,585)	$ 13,132	$ (4,157)
Weighted average common shares outstanding, basic	27,642,000	26,893,000	27,444,000	26,889,000
Net income (loss) per share, basic	$ 0.42	$ (0.10)	$ 0.48	$ (0.15)
Weighted average common shares outstanding, diluted	32,787,000	26,893,000	32,298,000	26,889,000
Net income (loss) per share, diluted	$ 0.35	$ (0.10)	$ 0.41	$ (0.15)

Note 9 — Income Taxes

The following table summarizes the Company's income tax expense and effective tax rates for the three and six months ended June 30, 2026 and 2025:

	Three Months Ended		Six Months Ended	
	June 30, 2026	June 30, 2025	June 30, 2026	June 30, 2025
Income (loss) before income taxes	$ 11,718	$ (2,519)	$ 13,292	$ (4,017)
Income tax expense	140	66	160	140
Effective tax rate	1.2%	(2.6%)	1.2%	(3.5%)

(in thousands, except share and per share amounts)

The Company's quarterly income tax provision is calculated under the discrete method, which treats the interim period as if it were the annual period and determines the income tax expense or benefit on that basis. The discrete method is applied when application of the estimated annual effective income tax rate is impractical because it is not possible to reliably estimate the annual effective tax rate. The Company believes, at this time, the use of this discrete method is more appropriate as the annual effective income tax rate cannot be reliably estimated given the Company's full valuation allowance recorded on its net deferred tax assets and annual utilization limitations that prevent the Company from fully offsetting its expected current income tax liabilities with its available net operating losses and income tax credits.

The Company's quarterly income tax provision calculated under the discrete method for the three months and six months ended June 30, 2026 captures the income tax effects of the One Big Beautiful Bill Act ("OBBBA"), which was enacted on July 4, 2025. The Company's current income tax expense for the three months and six months ended June 30, 2026 includes the benefit of the OBBBA restoring the ability to immediately deduct domestic research & experimental expenditures under Internal Revenue Code Section 174. The Company did not record any deferred income tax expense or benefit related to the OBBBA tax law changes during the period ended June 30, 2026 as the Company continues to record a full valuation allowance against its net deferred tax assets.

The effective tax rate for the three months and six months ended June 30, 2026 varies from the three months and six months ended June 30, 2025 primarily as a result of the Company's valuation allowance recorded against its net deferred tax assets and annual tax attribute utilization limitations that result in current income tax expense. Taxes paid during the six months ended June 30, 2026 and 2025 were $85 and $89, respectively. Tax refunds received during the six months ended June 30, 2026 and 2025 were $109 and $0, respectively.

Note 10 — Related-Party Transactions

Chief Executive Officer

Previously, the Company acquired DS-200 and all related intellectual property pursuant to an asset purchase agreement (the "Selenix Agreement") dated June 23, 2017 between the Company and Selenix LLC ("Selenix"), an entity affiliated with the CEO. On August 30, 2024, the Company amended the Selenix Agreement in tandem with an agreement to sell DS-200 in August 2024 (see Note 12). Pursuant to the terms of the amended Selenix Agreement, Selenix waived its rights to future milestone payments and 50% of DS-200 profit in exchange for 45% of proceeds received by the Company from the DS-200 sale agreement. Selenix is 50% owned by Messa Holdings LLC ("Messa"), which is 100% owned by the CEO. In March 2025, the Company recognized licensing revenue of $1,500 and $825 in cost of sales from a development milestone.

Note 11 — Leases

The Company recognizes a right-of-use ("ROU") asset and a lease liability on the balance sheets for substantially all leases, including operating leases, and separates lease components from non-lease components related to its office space lease.

In May 2025, the Company entered into an amendment to its office lease agreement to expand its office space, from 5,507 square feet, to 8,079 square feet and to renew its lease term. The amendment to the lease agreement was effective September 1, 2025 and the renewal period for the office lease is for a sixty-five month period through January 2031 and which includes tenant improvement allowances. The Company removed its existing ROU asset and liability and recorded $333 in ROU assets, $189 in tenant improvement allowances and $522 in operating lease liabilities in association with the lease extension.

In May 2026, the Company entered into an additional office lease agreement for 4,634 square feet. The lease agreement was effective May 15, 2026 for a fifty-one month period through July 2030. The Company capitalized $849 in ROU assets and recorded $849 in operating lease liabilities in association with the lease agreement.

The Company's operating lease cost was $85 and $42 for the six months ended June 30, 2026 and 2025, respectively. For the six months ended June 30, 2026 and 2025, cash paid for operating leases was $97 and $45, respectively. The ROU asset non-cash lease expense was $45 and $30 for the six months ended June 30, 2026 and 2025, respectively, and is reflected within non-cash lease expense on the Company's Condensed Statements of Cash Flows. As of June 30, 2026 and December 31, 2025, the average remaining lease term was 4.4 and 5.2 years, respectively, and the weighted average discount rate was 11.0% and 11.8%, respectively, for each period.

The table below presents the lease-related assets and liabilities recorded on the balance sheets as of June 30, 2026 and December 31, 2025:

Assets	**Classification**	**June 30, 2026**	**December 31, 2025**
Operating lease right-of-use assets	Operating lease right-of-use assets, net	$ 1,114	$ 310
Total leased assets		$ 1,114	$ 310
Liabilities			
Operating lease liabilities, current	Accrued liabilities	$ 239	$ 65
Operating lease liabilities, noncurrent	Operating lease liabilities, net of current portion	1,083	460
Total operating lease liabilities		$ 1,322	$ 525

The Company's future lease commitments as of June 30, 2026, are as indicated below:

	Total	**2026 (Remainder)**	**2027**	**2028**	**2029**	**2030**	**2031 and thereafter**
Undiscounted lease payments	**$ 1,668**	**$ 184**	**$ 375**	**$ 387**	**$ 398**	**$ 299**	**$ 25**
Less: Imputed interest	**(346)**						

Total lease liabilities	$ **1,322**

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Note 12 — Commitments and Contingencies

Legal

The Company is subject to legal proceedings and claims that may arise in the ordinary course of business. The Company is not aware of any pending or threatened litigation matters at this time that would have a material impact on the operations of the Company.

License and product development agreements

The Company has entered into various agreements that include commitments and contingencies which are described below.

In March 2020, the Company entered into an Exclusive License and Supply Agreement (the "Alkindi License Agreement") with Diurnal for marketing ALKINDI SPRINKLE® in the United States. In December 2024, the Company and Diurnal entered into an amendment to the Alkindi License Agreement to extend the agreement terms to incorporate both ALKINDI SPRINKLE® and KHINDIVI™ in the existing agreement terms. The Company could pay up to $44,000 in future sales milestones. The Company pays tiered royalties of 11.0% to 17.0% on net sales.

In June 2021, the Company acquired U.S. and Canadian rights to Crossject's ZENEO® hydrocortisone needleless autoinjector, which is under development as a rescue treatment for adrenal crisis. The Company could pay up to $3,500 in future development milestones and up to $6,000 in commercial milestones, as well as a 10% royalty on net sales.

In September 2022, the Company entered into a licensing agreement with Lukare Medical LLC ("Lukare") to which the Company acquired the U.S. rights to Betaine Anhydrous (betaine anhydrous oral solution). Under the terms of the agreement, Lukare is entitled to a $250 commercial milestone payment upon Betaine Anhydrous achievement of a certain net sales and a $500 payment if no generic competitors have launched within 48 months after the effective date of the license agreement.

In March 2023, the Company acquired rare disease endocrinology product candidate, ET- 600, from Tulex. In February 2026, the FDA approved the New Drug Application ("NDA") for ET-600 ("DESMODA™") and the Company launched DESMODA™ in March 2026 and was obligated to make a milestone payment of $250 (paid in April 2026). The Company pays tiered royalties to Tulex of 12.5% to 17.0% on net sales of DESMODA™.

In March 2024, the Company entered into a licensing agreement with APR Applied Pharma Research SA ("APR") pursuant to which the Company agreed to acquire the U.S. rights to various products under the PKU GOLIKE brand. The Company could pay up to $2,000 in one-time sales milestones, and the Company pays a royalty of 30% of net sales less product costs to APR.

In August 2024, the Company entered into an agreement to sell its DS-200 product candidate. In March 2025, the Company recognized licensing revenue of $1,500 from a development milestone payment. In addition, the Company could receive additional milestone payments of up to $5,000 based on the achievement of certain future development and commercial milestones related to DS-200, of which the Company would recognize 45% of the proceeds from the future milestones, with the balance being distributed to other partners.

In November 2024, the Company entered into a licensing agreement with AMMTeK pursuant to which the Company agreed to acquire the U.S. rights to Amglidia (glyburide oral suspension). Amglidia was approved by the European Medicines Agency in 2018 and has been granted Orphan Drug Designation by the U.S. FDA. AMMTeK has conducted a post-approval study tracking five years of real-world safety and efficacy in European patients, which will be used to support the Company's NDA submission. In July 2025, the Company paid $500 to AMMTek upon the receipt of FDA meeting minutes and under the terms of the licensing agreement, the Company could pay up to $1,850 as follows: $550 upon NDA acceptance for review by the FDA and $1,300 upon NDA approval by the FDA and first commercial sale. The Company would also be required to pay a royalty of 14% of net sales to AMMTek.

In December 2024, the Company acquired GALZIN® (zinc acetate) from Teva Pharmaceuticals USA, Inc and assumed the commercialization of the product in the U.S. during March of 2025. The Company is required to pay the seller a royalty of 10% of U.S. net sales through the tenth anniversary of the Company's first commercial sales of the product in the U.S.

In December 2024, the Company acquired INCRELEX® (mecasermin injection) from Ipsen S.A. The Company is obligated to pay the seller $2,500 on each of the first and second anniversaries of closing, of which $2,500 was paid to Ipsen S.A. in December 2025. As of June 30, 2026 and December 31, 2025, the present value of the deferred consideration of $2,379 and $2,259, respectively, was classified as accrued liabilities in the Condensed Balance Sheets, with $121 and $241 as of June 30, 2026 and December 31, 2025, respectively, to be accreted to interest expense over the remainder of the deferred consideration term using the effective interest rate method.

In connection with the INCRELEX® product acquisition, the Company assumed the commercial manufacturing and supply agreement between Simtra BioPharma Solutions and Ipsen Pharma SAS. The commercial manufacturing and supply agreement was executed in November 2020 and expires in November 2027. The commercial manufacturing and supply agreement is associated with the production of INCRELEX® for commercial usage and contains an annual production obligation and a maximum annual obligation.

Additionally, in connection with the INCRELEX® product acquisition, the Company assumed a manufacturing services agreement between Lonza Ltd and Ipsen Pharma SAS, as amended. The manufacturing services agreement was executed in December 2022 and expires in December 2032. The manufacturing services agreement is associated with the production of INCRELEX® bulk drug substance and contains a minimum and a maximum obligation every twenty-four months.

Eton Pharmaceuticals, Inc.
Notes to Condensed Financial Statements
(in thousands, except share and per share amounts)
(Unaudited)

In March 2025, the Company out-licensed the commercial rights to INCRELEX® in territories outside of the U.S. to Esteve Pharmaceuticals, S.A. (“Esteve”). Under the terms of the licensing agreement, Esteve paid the Company in July 2025 €4,000 to license the rights to INCRELEX® for up to ten years, and Esteve also received an option to acquire the international rights in the future for a purchase price of up to €6,000. In accordance with the accounting pronouncement guidance in ASC 606 with respect to the license and supply agreements between the Company and Esteve, the Company recognized in March 2025, $4,327 in accounts receivable, licensing revenues of $1,786 and deferred revenues of $2,541. With respect to deferred revenues, $330 and $457, respectively, are reflected in accrued liabilities and $1,617 and $1,762, respectively, in other long-term liabilities in the Company's Condensed Balance Sheets as of June 30, 2026 and December 31, 2025. Deferred revenues will be amortized to revenues over the course of the agreements based on quarterly INCRELEX® product sales, and at the end of the license agreement, a deferred revenue residual will be recognized at the end of the initial term of the license agreement. During the six months ended June 30, 2026, the Company recognized $430 in deferred revenues associated with the supply agreement.

In June 2025, in connection with the asset purchase agreement with Ipsen S.A, the Company purchased $11,540 in inventory. Under the terms of the inventory purchase agreement, the Company is required to make eight equal quarterly installment payments to Ipsen S.A, beginning in the third quarter of 2025. Accordingly, the Company has classified $6,884 and $6,926, respectively, in accounts payable and $0 and $3,463, respectively, in other long-term liabilities in the accompanying Condensed Balance Sheets as of June 30, 2026 and December 31, 2025.

In February 2026, the Company entered into a licensing agreement to acquire the U.S. rights to HEMANGEOL® (propranolol) oral solution from Pierre Fabre. Under the terms of the licensing agreement, the Company will pay an 8% royalty on net sales for the duration of the product’s patent protected life (October 2028). The Company accounted for this transaction as an asset acquisition.

In May 2026, the Company entered into a licensing agreement for the U.S. rights to IMPAVIDO® (miltefosine) oral capsules with an affiliate of Knight Therapeutics, Inc. (“Knight Therapeutics”). Under the terms of the licensing agreement, the Company will pay Knight Therapeutics $4,250 in fixed fees during the initial term ending March 31, 2032 as follows: $125 on July 1, 2026, $1,250 on April 1, 2027, $1,000 on June 30, 2028, $1,000 on June 30, 2029 and $875 on June 30, 2030. The Company's exclusive right to commercialize IMPAVIDO® in the U.S. will begin in September 2026. As of June 30, 2026, the Company has classified $1,020 and $2,304 in accrued liabilities and other long-term liabilities, respectively, in the accompanying Condensed Balance Sheets associated with the associated future fixed fees described above, with $926 to be accreted to interest expense through June 30, 2030 using the effective interest rate method. After the initial term, the Company will have the option to make up to ten additional annual renewals subject to certain conditions and an annual fee. The Company would also pay up to an additional $4,000 by making $1,000 payments when cumulative net sales reach $50,000, $100,000, $150,000 and $200,000, respectively. The Company will also pay Knight Therapeutics 55% of net sales up to $7,000 per calendar year and 50% of net sales above $7,000 per calendar year. Knight Therapeutics will be responsible for all product costs and regulatory expenses associated with IMPAVIDO®, and the Company will be responsible for sales and marketing expenses related to commercialization.

Indemnification

As permitted under Delaware law and in accordance with the Company’s Amended and Restated Bylaws, the Company is required to indemnify its officers and directors for certain events or occurrences while the officer or director is or was serving in such capacity. The Company is also party to indemnification agreements with its directors and officers. The Company believes the fair value of the indemnification rights and agreements is minimal. Accordingly, the Company has not recorded any liabilities for these indemnification rights and agreements as of June 30, 2026 and December 31, 2025.

Note 13 — Subsequent Events

On July 31, 2026, the Company entered into a license agreement for a late-stage rare disease product candidate ASN-001 (timolol topical gel) from Auson Pharmaceuticals (“Auson”) for the treatment of proliferating superficial infantile hemangiomas. Under the terms of the agreement, the Company will pay an upfront license fee to Auson of $3,000 within thirty days of the agreement. Additionally, the Company will run a bioavailability bridging study for ASN-001 and the Company intends to submit the NDA upon completion of the study in the second half of 2027. Upon the successful approval of ASN-001 by the FDA, the Company would be responsible for the following milestone events: $5,000 upon first commercial sale of product after FDA approval; $1,000, upon first calendar year in which aggregate annual net sales of product meet or exceed $20,000 in product sales; $2,500 upon first calendar year in which aggregate annual net sales of product meet or exceed $40,000 in product sales; and $5,000 upon first calendar year in which aggregate annual net sales of product meet or exceed $80,000 in product sales, $10,000 upon first calendar year in which aggregate annual net sales of product meet or exceed $150,000 in product sales; and $10,000 upon first calendar year in which aggregate annual net sales of product meet or exceed $280,000 in product sales. The Company will pay royalties to Auson as follows: 10% royalty rate for net product sales of less than or equal to $200,000; 13% royalty rate for net product sales greater than $200,000 but less than or equal to $400,000; and 15% royalty rate for net product sales greater $400,000. The royalty tiers are based on cumulative lifetime product sales.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with (i) our unaudited interim condensed financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q and (ii) our audited financial statements and notes thereto and management's discussion and analysis of financial condition and results of operations Included in our Annual Report on Form 10-K for the year ended December 31, 2025 filed with the Securities and Exchange Commission (the "SEC") on March 19, 2026 (the "2025 10-K").

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934 (the "Exchange Act"), including, without limitation, statements regarding our expectations, beliefs, intentions or future strategies that are signified by the words "expect," "anticipate," "intend," "believe," "may," "plan," "seek" or similar language. All forward-looking statements included in this document are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Our business and financial performance are subject to substantial risks and uncertainties. Actual results could differ materially from those projected in the forward-looking statements. In evaluating our business, you should carefully consider other matters set forth in our SEC filings, including the Risk Factors set forth in Part I, Item 1A of our 2025 10-K.

Overview

Eton is an innovative pharmaceutical company focused on developing and commercializing treatments for rare diseases. We currently have eleven commercial rare disease products: INCRELEX®, HEMANGEOL®, ALKINDI SPRINKLE®, KHINDIVI™, DESMODA™, GALZIN®, PKU GOLIKE®, IMPAVIDO®, Carglumic Acid, Betaine Anhydrous and Nitisinone, with IMPAVIDO® scheduled for commercialization in September 2026. We have four additional product candidates in late-stage development: Amglidia®, ET-700, ET-800 and ZENEO® hydrocortisone autoinjector.

Results of Operations (dollars in thousands)

During the three months ended June 30, 2026, we had $37,589 in total revenues that generated a gross profit of $25,413 compared to total revenues of $18,928 during the three-month period ended June 30, 2025 that generated a gross profit of $11,924 for the period. The increase in product sales, net was primarily the result of increased sales of INCRELEX®, GALZIN®, Carglumic Acid and the addition of HEMANGEOL® product sales in the current period.

During the six months ended June 30, 2026, we had $61,855 in total revenues that generated a gross profit of $40,148 compared to total revenues of $36,210 during the six-month period ended June 30, 2025 that generated a gross profit of $21,785 for the period. The increase in product sales, net was primarily the result of increased sales of INCRELEX®, GALZIN®, ALKINDI SPRINKLE®, Carglumic Acid and the addition of HEMANGEOL® product sales in the current period.

Licensing revenue during the six months ended June 30, 2026 was $0 compared to $3,286 in licensing revenue during the six months ended June 30, 2025. Licensing revenue during the six months ended June 30, 2025 was due to $1,786 from our out-licensing of INCRELEX® rights outside of the U.S. and $1,500 from the recognition of a development milestone event associated with our divestiture of DS-200.

Research and Development Expenses

During the three months ended June 30, 2026, we incurred $993 of research and development ("R&D") expenses as compared to $3,712 for the same period in 2025. During the six months ended June 30, 2026, we incurred $2,868 of research and development ("R&D") expenses as compared to $4,873 for the same period in 2025. In 2025, the Company paid a $2,155 NDA filing fee for DESMODA™, which was approved by the FDA in February of 2026.

General and Administrative Expenses

G&A expenses consist primarily of employee compensation expenses, legal and professional fees, product marketing expenses, FDA fees, distribution expenses, business insurance, travel expenses, and general office expenses. During the three-month periods ended June 30, 2026 and 2025, we incurred $11,626 and $9,687, respectively, of G&A expenses. During the six-month periods ended June 30, 2026 and 2025, we incurred $22,072 and $18,857, respectively, of G&A expenses. The increase in G&A expenses during the six months ended June 30, 2026 was primarily attributable to higher FDA fees as the Company no longer qualifies for the orphan fee exemption and higher employee-related costs due to increased headcount to support the business.

Liquidity and Capital Resources

As of June 30, 2026, we had total assets of $115.8 million, cash and cash equivalents of $26.8 million and working capital of $23.5 million.

Cash Flows

The following table sets forth a summary of our cash flows for the six-month periods ended June 30, 2026 and 2025 (dollars in thousands):

	Six months ended June 30, 2026	Six months ended June 30, 2025
Net cash from operating activities	$ 14,660	$ 10,049
Cash used in investing activities	(15,070)	—
Cash from financing activities	1,313	394
Change in cash and cash equivalents	**$ 903**	**$ 10,443**

During the six months ended June 30, 2026, net cash from operating activities was $14,660 compared to $10,049 during the six months ended June 30, 2025. The increase in cash from operating activities during the six months ended June 30, 2026 was primarily due to higher cash collections from product sales and lower cash outlay for inventory purchases. During the six months ended June 30, 2026, net cash used in investing activities was $15,070 and was primarily attributable to a $14,000 payment associated with the acquisition of the U.S. commercial rights to HEMANGEOL® in February 2026 and the $1,000 upfront payment for the licensing of U.S. marketing rights to an ultra-rare disease product candidate, which also occurred in February 2026. During the six months ended June 30, 2026, net cash from financing activities was $1,313 compared to $394 during the six months ended June 30, 2025. The increase in net cash from financing activities related to increased proceeds of $3,649 from stock option exercises, proceeds of $270 from the employee stock purchase program, partially offset by a $3,000 principal debt payment.

Non-GAAP Financial Measures

EBITDA, or earnings before interest, taxes, depreciation and amortization, adjusted EBITDA, non-GAAP net income and non-GAAP earnings per share are used and provided by us as non-GAAP financial measures. These non-GAAP financial measures are intended to provide additional information on our performance, operations and profitability. Adjustments to our GAAP figures as well as EBITDA includes non-recurring acquisition or divestiture-related costs and severance costs, as well as non-cash items such as share-based compensation, inventory step-up expense, depreciation and amortization, and other non-cash adjustments. Certain other special items or substantive events may also be included in the non-GAAP adjustments periodically when their magnitude is significant within the periods incurred. We maintain an established non-GAAP policy that guides the determination of what costs or gains will be included in non-GAAP adjustments.

We believe that these non-GAAP financial measures, when considered together with the GAAP figures, can enhance an overall understanding of our financial and operating performance. The non-GAAP financial measures are included with the intent of providing investors with a more complete understanding of our historical financial results and trends and to facilitate comparisons between periods. In addition, these non-GAAP financial measures are among the indicators our management uses for planning and forecasting purposes and measuring our performance. These non-GAAP financial measures should be considered in addition to, and not as a substitute for, or superior to, financial measures calculated in accordance with GAAP. The non-GAAP financial measures used by us may be calculated differently from, and therefore may not be comparable to, non-GAAP financial measures used by other companies.

Reconciliations of reported GAAP net income (loss) to EBITDA, adjusted EBITDA and non-GAAP net income, and the related per share amounts, were as follows (in thousands, except share and per share amounts):

	For the three months ended		For the six months ended	
	June 30, 2026	June 30, 2025	June 30, 2026	June 30, 2025
GAAP Net income (loss)	$ **11,578**	$ **(2,585)**	$ **13,132**	$ **(4,157)**
Depreciation (1)	22	4	44	16
Intangible amortization expense (2)	1,364	1,001	2,473	2,002
Interest expense (including debt discount amortization and non-cash interest expenses)	1,013	1,198	2,149	2,361
Income tax expense	140	66	160	140
EBITDA	$ **14,117**	$ **(316)**	$ **17,958**	$ **362**
Other non-GAAP adjustments:				
Inventory step-up expense (3)	650	1,207	1,000	2,349
Stock-based compensation (4)	1,468	2,096	2,986	3,296
Severance expense (5)	—	—	—	335
Acquisition/divestiture-related costs (6)	—	64	—	384
Total of Other non-GAAP adjustments	2,118	3,367	3,986	6,364
Adjusted EBITDA	$ **16,235**	$ **3,051**	$ **21,944**	$ **6,726**
GAAP Net income (loss)	$ **11,578**	$ **(2,585)**	$ **13,132**	$ **(4,157)**
Non-GAAP adjustments:				
Depreciation (1)	22	4	44	16
Intangible amortization expense (2)	1,364	1,001	2,473	2,002
Inventory step-up expense (3)	650	1,207	1,000	2,349
Stock-based compensation (4)	1,468	2,096	2,986	3,296
Severance expense (5)	—	—	—	335
Acquisition/divestiture-related costs (6)	—	64	—	384
Total pre-tax non-GAAP adjustments	3,504	4,372	6,503	8,382
Income tax effect of pre-tax non-GAAP adjustments (7)	735	247	806	290
Total non-GAAP adjustments	2,769	4,125	5,697	8,092
Non-GAAP Net income	$ **14,347**	$ **1,540**	$ **18,829**	$ **3,935**
Weighted average number of common shares outstanding, basic	27,642	26,893	27,444	26,889
Weighted average number of common shares outstanding, diluted	32,787	31,141	32,298	31,066
GAAP income (loss) per share - Basic	$ **0.42**	$ **(0.10)**	$ **0.48**	$ **(0.15)**
Non-GAAP adjustments	0.10	0.15	0.21	0.30
Non-GAAP income per share - Basic	$ **0.52**	$ **0.05**	$ **0.69**	$ **0.15**
GAAP income (loss) per share - Diluted	$ **0.35**	**(0.10)**	$ **0.41**	$ **(0.15)**
Non-GAAP adjustments	0.08	0.13	0.18	0.26
Non-GAAP income per share - Diluted	$ **0.43**	$ **0.03**	$ **0.59**	$ **0.11**

(1) Represents depreciation expense related to our property and equipment.
(2) Intangible amortization expenses are associated with our intellectual property rights related to INCRELEX®, HEMANGEOL®, GALZIN®, PKU GOLIKE®, IMPAVIDO®, Carglumic Acid, Betaine Anhydrous and Nitisinone.

(3) During the three and six months ended June 30, 2026, we recognized in cost of sales $650 and $1,000, respectively, compared to $1,207 and $2,349 during the three and six months ended June 30, 2025, respectively, for inventory step-up expense primarily attributable to the HEMANGEOL® inventory revalued in connection with the product acquisition in 2026 period, and the INCRELEX® inventory revalued in connection with this product acquisition in the 2025 periods.
(4) Represents share-based compensation expense associated with our stock option and restricted stock unit grants to our employees and non-employee directors and our employee share purchase plan.
(5) Represents severance and benefit expenses associated with role redundancy within commercial operations during the first quarter of 2025.
(6) Represents legal expense and other divestiture-related costs associated with the out-licensing of the INCRELEX® commercial rights in territories outside of the U.S.
(7) Income tax adjustments on pre-tax non-GAAP adjustments represent the estimated income tax impact of each pre-tax non-GAAP adjustment based on the effective income tax rate for the period. As discussed further in Note 9, we are in a full income tax valuation allowance position and the income tax effect on pre-tax non-GAAP adjustments is commensurate with the performance measure.

Critical Accounting Policies

Our financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of our financial statements and related disclosures requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, costs and expenses in our financial statements. We base our estimates on historical experience, known trends and events and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in more detail in Note 2 to notes to our financial statements included herein, we believe that the following accounting policies are those most critical to the judgments and estimates used in the preparation of our financial statements.

Revenue Recognition for Contracts with Customers

We account for contracts with our customers in accordance with Accounting Standards Codification ("ASC") 606 — Revenue from Contracts with Customers. ASC 606 applies to all contracts with customers, except for contracts that are within the scope of other standards. Under ASC 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, the entity performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

At contract inception, once we determine the contract falls within the scope of ASC 606, we assess the goods or services promised within each contract and determines those that are performance obligations and assesses whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. Arrangements that include rights to additional goods or services that are exercisable at a customer's discretion are generally considered options. We assess whether these options provide a material right to the customer and, if so, they are considered performance obligations. Renewal options that provide a material right are treated as a separate performance obligation, allocated a portion of the transaction price, and related revenue is deferred until the option is exercised or the option expires unused.

We recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) each performance obligation is satisfied at a point in time. For the three and six months ended June 30, 2026 and 2025, all revenues recognized in the Condensed Statements of Operations were point in time sales to our customers.

Milestone Payments – If a commercial contract arrangement includes development milestone payments, we will evaluate whether the milestone conditions have been achieved and if it is probable that a significant revenue reversal would not occur before recognizing the associated revenue. Milestone payments that are not within our control or the licensee's control, such as regulatory approvals, are generally not considered probable of being achieved until those approvals are received.

Licensing Revenues – We recognize revenues from licensing arrangements primarily associated with product license agreements that could contain development activity milestones and agreements to divest the licensing rights to products or product candidates. At the inception of each licensing agreement, we assess the goods or services promised within the contract to identify performance obligations. If a license to our product rights is determined to be distinct from other promised goods or services, it is accounted for as a separate performance obligation. If a license grants the customer a right to use our product license, revenue is recognized at the point in time when the license is transferred to the customer and the customer has the ability to use and benefit from the product license. Additionally, revenue is recognized from product license agreements with development activity milestones when these development activities occur per the contractual terms of the agreement.

Royalties – For arrangements that include sales-based royalties, including milestone payments based on a level of sales, which are the result of a customer-vendor relationship and for which the license is deemed to be the predominant item to which the royalties relate, we will recognize revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied or partially satisfied.

Principal Versus Agent – Under the terms of the transitional services agreement ("TSA") between us and Ipsen S.A, we evaluated whether our performance obligation is a promise to transfer product to a customer as the principal, or to arrange for product to be provided by another party using a control model as the agent. This evaluation determined that we are not in control of establishing the transaction price, managing all aspects of the shipment process and taking the risk of loss for delivery, collection and returns. Based on our evaluation of the control model, we determined that our responsibilities under the TSA was as an agent and not the principal, and correspondingly, such revenue related to products sold by Ipsen S.A are reported on a net versus a gross basis.

Significant Financing Component – In determining the transaction price, we will adjust consideration for the effects of the time value of money if the expected period between payment by the licensees and the transfer of the promised goods or services to the licensees will be more than one year.

We bill for our products at the initial product list price which are subject to offsets for patient co-pay assistance and potential state Medicaid reimbursements and other government programs which are recorded as a reduction of net revenues at the date of sale/shipment. Our product sales are not subject to returns. Upon recognition of revenue from product sales, the estimated amounts of chargebacks, prompt pay discounts and state Medicaid and other government program rebates are in sales reserves, accrued liabilities and net accounts receivable.

We store our products inventory at our specialty pharmacy distributor locations, and sales are recorded when stock is pulled and shipped to fulfill specific patient orders.

The state Medicaid and other government program rebates and related liabilities are estimated based on monthly sales, historical experience of claims submitted by the various states and jurisdictions, historical rebate rates and estimated lag time of the rebate invoices.

Acquisitions

We account for business acquisitions using the acquisition method of accounting. Under this method of accounting, assets acquired and liabilities assumed are recorded at their respective fair values at the date of the acquisition. When determining the fair values of assets acquired and liabilities assumed, management makes significant estimates and assumptions. Our estimates of fair value are based upon assumptions believed to be reasonable but that are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. Any excess of the purchase price over the fair value of the net assets acquired is recognized as goodwill.

We account for acquisitions that do not meet the definition of a business as an asset acquisition. The determination of whether a transaction represents a business combination or an asset acquisition requires significant judgment, including an evaluation of whether the acquired set includes a substantive process and whether substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar assets. For transactions accounted for as an asset acquisition, we allocate the purchase price, including transaction costs, to the individual assets acquired and liabilities assumed on a relative fair value basis. This allocation requires management to make significant estimates and assumptions, including the selection of valuation methodologies, discount rates, projected cash flows, and useful lives of acquired assets. Changes in these assumptions could result in materially different allocations of the purchase price, which may impact future depreciation and amortization expense. In addition, because goodwill is not recognized in asset acquisitions, the assignment of value to identifiable intangible assets may be greater than in a business combination.

We amortize finite-lived intangible assets over their estimated useful lives and evaluates indefinite-lived assets for impairment. The determination of useful lives and the timing of impairment assessments require significant judgment and may materially affect our results of operations. Critical estimates in valuing certain of the intangible assets acquired include:

- future expected cash flows from customer contracts and license agreements;
- historical and expected customer attrition rates and anticipated growth in revenues from acquired customers; and
- discount rates.

Stock-Based Compensation

We account for stock-based compensation under the provisions of ASC 718 Compensation – Stock Compensation. The guidance under ASC 718 requires companies to estimate the fair value of the stock-based compensation awards on the date of grant and record expense over the related service periods, which are generally the vesting period of the equity awards. Compensation expense is recognized over the period during which services are rendered by consultants and non-employees until completed. The fair value of these awards and assumption inputs are measured using the Black-Scholes option-pricing model (“BSM”).

We estimate the fair value of stock-based option awards using the BSM. The BSM requires the input of subjective assumptions, including the expected stock price volatility, the calculation of expected term, forfeitures and the fair value of the underlying common stock on the date of grant, among other inputs. The risk-free interest rate was determined from the implied yields for zero-coupon U.S. government issues with a remaining term approximating the expected life of the options. Dividends on common stock are assumed to be zero for the BSM valuation of the stock options. The expected term of stock options granted is based on vesting periods and the contractual life of the options. Expected volatilities are based on our historical volatility subsequent to our IPO, which we believe represents the most accurate basis for estimating expected future volatility. We account for forfeitures as they occur.

Off Balance Sheet Transactions

We do not have any off-balance sheet transactions.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The primary objective of our investment activities is to preserve capital. We do not utilize hedging contracts or similar instruments. We are exposed to certain market risks relating primarily to interest rate risk on our cash and cash equivalents and risks relating to the financial viability of the institutions which holds our capital and through which we have invested our funds. We manage such risks by investing in short-term, liquid, highly rated instruments. As of June 30, 2026, our cash equivalents only included cash deposits and a government money market fund at our bank. From time to time, we do have cash investments in short-term money market or U.S. treasury bills. We do not believe that we have any material exposure to interest rate risk in the current interest rate environment and the short duration of the invested funds we hold. Declines in interest rates would reduce our investment income but would not have a material effect on our financial condition or results of operations. We have limited exposure to foreign currency risk.

We are subject to interest rate risk in connection with our variable rate credit agreement. Our principal interest rate exposure relates to our credit agreement, which bears interest rates that are indexed against SOFR plus 6.55%. As of June 30, 2026, we had outstanding borrowings under our credit agreement totaling $27.0 million, excluding unamortized debt issuance costs and accrued exit fees.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, which are controls and other procedures that are designed to provide reasonable assurance that information required to be disclosed by a company in the reports that it files or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures also include, without limitation, controls and procedures designed to provide reasonable assurance 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, however, that a controls system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the controls systems are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud or error, if any, within a company have been detected.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated, as of June 30, 2026, the effectiveness of our disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e) and Rule 15(d)-15(e), and our Chief Executive Officer and Chief Financial Officer have concluded that, as of June 30, 2026, our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal controls over financial reporting (as defined in Rules 13a-15(f) of the Exchange Act) that occurred during the quarter ended June 30, 2026 that have materially affected, or are reasonable likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

We operate in a dynamic and rapidly changing environment that involves numerous risks and uncertainties. Certain factors may have a material adverse effect on our business, financial condition, and results of operations, and you should carefully consider them. Other events that we do not currently anticipate or that we currently deem immaterial may also affect our results of operations and financial condition.

You should carefully consider the factors discussed in Part I, Item 1A. “Risk Factors” in our 2025 10-K, which could materially affect our business, financial condition, cash flows or future results. The risk factors described in our 2025 10-K, are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition, or future results.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

During the quarter ended June 30, 2026, the Company issued an aggregate of 296,215 shares of its common stock at a weighted average exercise price of $31.83 through the exercise of warrants. The warrants were exercised on a cashless exercise basis and as a result, no cash proceeds were received by the Company and 62,901 warrants were surrendered. The warrants exercised were originally issued in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended Securities Exchange Act of 1933 (the “Securities Act”), and the shares of common stock issued upon exercise of the warrants were issued in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act. The issuance was made without general solicitation or advertising, and the investor represented that they were acquiring the securities for investment purposes and not with a view to distribution.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Rule 10b-5(1) Trading Plans. During the three-month period ended June 30, 2026, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

Item 6. Exhibits

The exhibits listed on the Exhibit Index are either filed or furnished with this report or incorporated herein by reference.

EXHIBIT INDEX

Exhibit No.	Description
10.1	Sixth Amendment to Credit Agreement by and among the Company and SWK Funding LLC dated as of April 6, 2026
10.2	Asset Purchase Agreement dated May 18, 2026 by and among Knight Therapeutics Europe S.A. and the Registrant (portions of the exhibit have been redacted).
10.3	Offer Letter Agreement by and between the Registrant and Judith Matthews, dated as of June 3, 2026
31.1	Certification of President and Chief Executive Officer (Principal Executive Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer (Principal Financial Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certifications of President and Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101	The following financial information from the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2026 formatted in Inline Extensible Business Reporting Language (iXBRL): (i) the Condensed Balance Sheets, (ii) the Condensed Statements of Operations, (iii) the Condensed Statements of Stockholders' Equity, (iv) the Condensed Statements of Cash Flows and (v) Notes to Condensed Financial Statements.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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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.

ETON PHARMACEUTICALS, INC.

August 13, 2026	By:	*/s/ Sean E. Brynjelsen*
		Sean E. Brynjelsen President and Chief Executive Officer (Principal Executive Officer)
	By:	*/s/ Judith M. Matthews*
		Judith M. Matthews Chief Financial Officer (Principal Financial Officer)

Exhibit 10.1

SIXTH AMENDMENT TO CREDIT AGREEMENT

THIS SIXTH AMENDMENT TO CREDIT AGREEMENT (this "**Amendment**"), dated as of April 9, 2026, is entered into by and among **ETON PHARMACEUTICALS, INC.**, a Delaware corporation ("**Borrower**"), each of the undersigned financial institutions (individually each a "**Lender**" and collectively "**Lenders**"), **SWK FUNDING LLC**, a Delaware limited liability company, in its capacity as administrative agent for the Lenders (in such capacity, "**Agent**").

RECITALS

WHEREAS, Borrower, Agent and Lenders entered into that certain Credit Agreement dated as of November 13, 2019 (as the same may be amended, modified or restated from time to time, being hereinafter referred to as the "**Credit Agreement**"); and

WHEREAS, Borrower, Agent and Lenders desire to amend the Credit Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

ARTICLE I

Definitions

1.1 Capitalized terms used in this Amendment are defined in the Credit Agreement, as amended hereby, unless otherwise stated.

ARTICLE II

Amendments to Credit Agreement

2.1 Effective as of the date hereof, the Credit Agreement (including the annexes, exhibits and schedules attached thereto and made a part thereof) is hereby amended (a) to delete the red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (b) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the changed-page, marked copy of the Loan Agreement attached as Exhibit A hereto and made a part hereof for all purposes.

2.2 Effective as of the date hereof, Exhibit B hereto contains the conformed Credit Agreement incorporating all changes set forth in Exhibit A and all prior amendments to the Credit Agreement.

2.3 Effective as of the date hereof, Annex I to the Credit Agreement is hereby amended and restated to read as follows:

ANNEX I

Commitments and Pro Rata Term Loan Shares

Lender	Commitment	Pro Rata Term Loan Share
SWK Funding LLC	$40,000,000	100%

ARTICLE III

Conditions Precedent

3.1 Conditions Precedent. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent in a manner reasonably satisfactory to Agent, unless specifically waived in writing by Agent in its sole discretion:

(A). Agent shall have received this Amendment duly executed by Borrower.

(B). The consummation of the "Mergers" contemplated in that certain Agreement and Plan of Merger, dated as of October 9, 2025, among Runway Growth Finance Corp. ("**Runway**"), certain affiliates of Runway and SWK Holdings Corporation.

(C). Agent shall have received payment of the fees of both Agent's and Runway's outside counsel, in each respect, invoiced on or about the date hereof.

(D). The representations and warranties contained herein and in the Credit Agreement and the other Loan Documents, as each is amended hereby, shall be true and correct in all material respects as of the date hereof (as updated herein), as if made on the date hereof, except for such representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date.

(E). No Default or Event of Default under the Credit Agreement, as amended hereby, shall have occurred and be continuing, unless such Default or Event of Default has been otherwise specifically waived in writing by Agent.

ARTICLE IV

No Waiver, Ratifications, Representations and Warranties

4.1 No Waiver. Nothing contained in this Amendment or any other communication between Agent, any Lender, Borrower or any other Loan Party shall be a waiver of any past, present or future non-compliance, violation, Default or Event of Default of Borrower under the Credit Agreement or any Loan Document. Agent and each Lender hereby expressly reserves any rights, privileges and remedies under the Credit Agreement and each Loan Document that such Person may have with respect to any non-compliance, violation, Default or Event of Default, and any failure by Agent or any Lender to exercise any right, privilege or remedy as a result of the violations set forth above shall not directly or indirectly in any way whatsoever either (i) impair, prejudice or otherwise adversely affect the rights of Agent or any Lender, except as set forth herein, at any time to exercise any right, privilege or remedy in connection with the Credit Agreement or any Loan Document, (ii) amend or alter any provision of the Credit Agreement or any Loan Document or any other contract or instrument or (iii) constitute any course of dealing or other basis for altering any obligation of Borrower or any rights, privilege or remedy of Agent or any Lender under the Credit Agreement or any Loan Document or any other contract or instrument. Nothing in this Amendment shall be construed to be a consent by Agent or any Lender to any prior, existing or future violations of the Credit Agreement or any Loan Document.

4.2 Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Credit Agreement and the other Loan Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Borrower, Lenders and Agent agree that the Credit Agreement and the other Loan Documents, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness. Borrower agrees that this Amendment is not intended to and shall not cause a novation with respect to any or all of the Obligations.

4.3 Representations and Warranties. Borrower hereby represents and warrants to Agent and Lenders that (a) the execution, delivery and performance of this Amendment, any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite action (as applicable) on the part of Borrower and will not violate the organizational documents of Borrower; (b) [reserved]; (c) the representations and warranties contained in the Credit Agreement, as amended hereby, and any other Loan Document are true and correct in all material respects on and as of the date hereof and on and as of the date of execution hereof as though made on and as of each such date (except to the extent such representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date); (d) [Reserved]; (e) no Default or Event of Default under the Credit Agreement, as amended hereby, has occurred and is continuing; (f) Loan Parties are in compliance in all material respects with all covenants and agreements contained in the Credit Agreement and the other Loan Documents, as amended hereby; and (g) except as disclosed to Agent, no Loan Party has amended its organizational documents since the date of the Credit Agreement.

ARTICLE V

Miscellaneous Provisions

5.1 Survival of Representations and Warranties. All representations and warranties made in the Credit Agreement or any other Loan Document, including, without limitation, any document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Agent or any Lender or any closing shall affect the representations and warranties or the right of Agent and each Lender to rely upon them.

5.2 Reference to Credit Agreement. Each of the Credit Agreement and the other Loan Documents, and any and all other Loan Documents, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in the Credit Agreement and such other Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

5.3 Expenses of Agent. As provided in the Credit Agreement, Borrower agrees to pay on demand all reasonable, duly documented, out-of-pocket costs and expenses incurred by Agent or its Affiliates, in connection with the preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the reasonable, duly documented, out-of-pocket costs and fees of legal counsel, and all costs and expenses incurred by Agent and each Lender in connection with the enforcement or preservation of any rights under the Credit Agreement, as amended hereby, or any other Loan Documents, including, without, limitation, the reasonable, duly documented, out-of-pocket costs and fees of legal counsel.

5.4 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

5.5 Successors and Assigns. This Amendment is binding upon and shall inure to the benefit of Agent and each Lender and Borrower and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of Agent.

5.6 Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Amendment may be executed by facsimile or electronic (.pdf) transmission, which facsimile or electronic (.pdf) signatures shall be considered original executed counterparts for purposes of this Section 5.6, and each party to this Amendment agrees that it will be bound by its own facsimile or electronic (.pdf) signature and that it accepts the facsimile or electronic (.pdf) signature of each other party to this Amendment.

5.7 Effect of Waiver. No consent or waiver, express or implied, by Agent to or for any breach of or deviation from any covenant or condition by Borrower shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

5.8 Headings. The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

5.9 Applicable Law. THE TERMS AND PROVISIONS OF SECTIONS 10.17 (GOVERNING LAW) AND 10.18 (FORUM SELECTION; CONSENT TO JURISDICTION) OF THE CREDIT AGREEMENT ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS AMENDMENT *MUTATIS MUTANDIS* AS IF FULLY SET FORTH HEREIN.

5.10 Final Agreement. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, EACH AS AMENDED HEREBY, REPRESENT THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AMENDMENT IS EXECUTED. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED HEREBY, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AMENDMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BORROWER AND AGENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Amendment has been executed and is effective as of the date first written above.

BORROWER:

ETON PHARMACEUTICALS, INC.,
a Delaware corporation

By: Signed by: Sean Brynjelsen
733278F4DD2D445...

Name: Sean Brynjelsen

Title: President and Chief Executive Officer

AGENT AND LENDER:

SWK FUNDING LLC,
as Agent and a Lender

Signed by:

By:

7A677C39C87245A...

Name: Thomas B. Raterman
Title: Authorized Signer

EXHIBIT A

Amendments to Credit Agreement

(See attached)

CREDIT AGREEMENT

among

ETON PHARMACEUTICALS, INC.,
as Borrower,

SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of November 13, 2019

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Compliance Certificate means a certificate substantially in the form of Exhibit B.

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) any Cash Equivalent Investment owned by Borrower and its Subsidiaries on a consolidated basis which are not the subject of any Lien or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Borrower and such Subsidiaries other than the Lien for the benefit of Agent and Lenders, minus (ii) the aggregate amount of Borrower's accounts payable under GAAP that are ninety (90) days or more past due unless the charges for such account payable are being actively disputed by the applicable Loan Party.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means a rate per annum equal to (a) the Term SOFR Rate, plus (b) ~~6.75~~6.55 percent (~~6.75~~6.55%).

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Controlled Substances Act means the Drug Abuse Prevention and Control Act; Title 21 of the United States Code, 13 U.S.C., as amended from time to time.

Copyrights shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

DEA means the Federal Drug Enforcement Administration of the United States of America.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), other than royalty payments or milestone payments made or to be made by such Person from time to time in connection with an Acquisition, (e) all indebtedness secured by a Lien Borrower or any of its Subsidiaries as such activities are being conducted by Borrower or its Subsidiaries with respect to such Product at such time), and (b) required by any Person from which Borrower or any of its Subsidiaries have received an accreditation.

Responsible Officer shall mean the president, vice president or secretary of a Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, or the treasurer of a Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance acceptable to Agent in its sole discretion.

Revenue-Based Payment has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Borrower and its Subsidiaries with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

~~September 2024 Term Loan has the meaning set forth in Section 2.2(d) hereof.~~

~~September 2024 Term Loan Advance Date means the date on which the September 2024 Term Loan is made to the Borrower.~~

~~September 2024 Term Loan Advance Conditions means the satisfaction or waiver (in Agent's reasonable discretion) in connection with the September 2024 Term Loan Advance:~~

~~(i) no Event of Default shall have occurred and be continuing on the September 2024 Term Loan Advance Date; and~~

~~(ii) Agent shall have received:~~

~~a. an officer's certificate of Borrower with resolutions substantially in the same form as delivered on the Closing Date;~~

~~b. an opinion of Borrower's outside legal counsel in relation to this Amendment and the Warrant to be delivered in connection herewith;~~

~~c. a fully-executed asset purchase agreement (the "Asset Purchase Agreement") in relation to the assets to be purchased with the proceeds of such advance together with all other material documents related thereto as reasonably requested by Agent;~~

~~d. updated schedules to the Guarantee and Collateral Agreement and IP Security Agreement incorporating the assets to be purchased pursuant to the Asset Purchase Agreement.~~

Services means services provided by Borrower or any Affiliate of Borrower to un-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

SOFR shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

Solvent means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become due; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they become due in the normal course of business; and (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they become due.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party upon terms acceptable to Agent in its commercially-reasonable discretion and that is subordinated to the Obligations pursuant to a subordination agreement acceptable to Agent in its commercially-reasonable discretion entered into between Agent, any applicable Loan Party and the subordinated creditor(s).

Subsequent Term Loan A has the meaning set forth in Section 2.2(b) hereof.

Subsequent Term Loan B has the meaning set forth in Section 2.2(c) hereof.

Subsequent Term Loan C has the meaning set forth in Section 2.2(e) hereof.

Subsequent Term Loan C Advance Date means the date on which the Subsequent Term Loan C is made to the Borrower.

Subsequent Term Loan C Advance Conditions means the satisfaction or waiver (in Agent's reasonable discretion) in connection with the Subsequent Term Loan C Advance, if any:

(i) no Event of Default shall have occurred and be continuing on the Subsequent Term Loan C Advance Date;

(ii) Agent shall have received:

a. an officer's certificate of Borrower with resolutions substantially in the same form as delivered on the Closing Date;

b. a fully-executed asset purchase agreement (the "Asset Purchase Agreement") in relation to the assets to be purchased with the proceeds of such advance together with all other material documents related thereto as reasonably requested by Agent;

c. updated schedules to the Guarantee and Collateral Agreement and IP Security Agreement incorporating the assets to be purchased pursuant to the Asset Purchase Agreement; and

(iii) Agent shall have approved the material terms of the transaction(s) subject to such Asset Purchase Agreement.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

SWK has the meaning set forth in the Preamble. Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section ~~2.1~~2.2, and shall, for the avoidance of doubt, include the ~~August 2020~~Closing Date Term Loan ~~and the September 2024~~, Subsequent Term Loan A, Subsequent Term Loan B and Subsequent Term Loan C.

Term Loan Commitment means $~~30,000,000~~40,000,000.

Term Loan Maturity Date means ~~(a) if the September 2024 Term Loan Advance Date occurs on or before December 31, 2024, the three (3) year anniversary of the September 2024 Term Loan Advance Date or (b) if the September 2024 Term Loan Advance Date does not occur on or before December 31, 2024, December 31, 2024.~~December 17, 2027.

Term SOFR Administrator shall mean the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion after consultation with Borrower).

Term SOFR Rate shall mean the Term SOFR Reference Rate for a three (3) month period that is ten (10) Business Days prior to each Payment Date (such day, the "Periodic Term SOFR Determination Day"), and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such three (3) month period, as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate was published by the Term SOFR Administrator. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the Term SOFR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent shall, in consultation with Borrower, endeavor to establish an alternate rate of interest to the Term SOFR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United States at such time, and, if requested by Agent, Agent and Lenders at such time party hereto and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (including, for the avoidance of doubt, any amendments to the definition of "Contract Rate" to ensure that the interest rate payable by Borrower hereunder is substantially similar to the interest rate that would otherwise be paid prior to the selection of such alternate rate of interest), and (ii) in no event shall the "Term SOFR Rate" or any such alternate rate of interest to the Term SOFR Rate ever be less than ~~five~~two and three-quarters of one percent (~~5.0~~2.75%).

Term SOFR Reference Rate shall mean the forward-looking term rate based on SOFR.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through any other mandatory or voluntary prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Trademarks shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) all of such Loan Party's (or if referring to another Person, such other Person's) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the Equity Interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2 Interpretation.

(a) In the case of this Agreement and each other Loan Document, (i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (ii) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (iii) the term "including" is not limiting and means "including but not limited to;" (iv) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including;" (v) unless otherwise expressly provided in such Loan Document, (A) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (B) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (vi) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (vii) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower's, Agent's or Lenders' involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (*x*) within the reasonable discretion of Agent and/or Lenders; and (*y*) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

Section 2 Credit Facility.

2.1 [Reserved].

2.2 Loan Procedures.

(a) The Lenders, severally and for themselves alone, made (i) a term loan (the "Closing Date Term Loan") on the Closing Date in the original principal amount of $5,000,000.00.

(b) On or about August 11, 2020, the Lenders, severally and for themselves alone, made an additional term loan in the original principal amount of $2,000,000.00, resulted in an aggregate, outstanding principal balance of the Term Loan of $7,000,000.00 immediately following the funding of such advance (the "~~August 2020~~Subsequent Term Loan A").

(c) On or about December 17, 2024, the Lenders, severally and for themselves alone, made an additional term loan in the original principal amount of $25,695,000, resulted in an aggregate, outstanding principal balance of the Term Loan of $30,000,000.00 immediately following the funding of such advance (the "Subsequent Term Loan B").

(d) ~~(c)~~ As of ~~September 30~~April 9, ~~2024~~2026, the outstanding principal balance of the Term Loan was $~~4,305,000.00~~30,000,000.00 prior to the funding of the ~~September 2024~~Subsequent Term Loan C (as defined below).

(e) ~~(d)~~ Upon satisfaction of the ~~September 2024~~Subsequent Term Loan C Advance Conditions, and at the request of Borrower at any time prior to the ~~Term Loan Maturity~~Payment Date occurring in November 2026, the Lenders, severally and for themselves alone, shall make an additional term loan in the original principal amount of $~~25,695,000~~10,000,000 (the "~~September 2024~~Subsequent Term Loan C"). Whenever Borrower desires that Lenders make the ~~September 2024~~Subsequent Term Loan C, Borrower shall deliver to Agent written notice (which may be by email) no later than noon (New York City time) at least one (1) Business Day in advance of the proposed funding date of the ~~September 2024~~Subsequent Term Loan C. Promptly upon receipt by Agent of such written notice, Agent shall notify each Lender of the proposed borrowing of the ~~September 2024~~Subsequent Term Loan C.

(f) ~~(c)~~ The Closing Date Term Loan, the ~~August 2020~~Subsequent Term Loan ~~and~~A, the ~~September 2024~~Subsequent Term Loan B and the Subsequent Term Loan C (if any) shall be deemed a single term loan (each such loan individually and collectively, the "Term Loan"). The Term Loan is not a revolving credit facility, and therefore, any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.3 Commitments Several.

The failure of any Lender to make any advance of the Term Loan shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender; provided, however, that this Section 2.3 shall not relieve any Lender from liability for a the failure of such Lender to make a Loan required to be made by such Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, set-off, counterclaim or defense for any reason against Agent and Lenders. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, set-off, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by ACH or wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension, satisfaction, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshalling of assets or to require foreclosure sales in a particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) [reserved], and (h) any defense to the obligation to make any payments required under the Loan Documents, including the obligation to pay taxes based on any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any of the Collateral, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the "Obligors"), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder.

(b) Borrower recognizes and acknowledges that any default on any payment, or portion thereof, due hereunder or to be made under any of the other Loan Documents, will result in losses and additional expenses to Agent in servicing the Loan, and in losses due to Lenders' loss of the use of funds not timely received. Borrower further acknowledges and agrees that in the event of any such Default, Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon the Term Loan Maturity Date and/or upon the occurrence and during the existence of an Event of Default (or upon any acceleration), interest shall automatically accrue hereunder, without notice to Borrower, at the Default Rate. The Default Rate shall be calculated and due from the date that the Default occurred which led to the Event of Default without regard to any grace or cure period as may be applicable and shall be payable upon demand.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate for any Loan (if applicable), together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder (if applicable), together with all charges payable in respect of the Loan, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest (if any) and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest (if any) and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

2.6.2 Payments of Interest and Principal.

Borrower shall pay to Lenders all accrued interest on the Loan in arrears on each Payment Date, upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Any partial prepayment of the Loan shall be applied in inverse order of maturity and so shall not reduce the amount of any quarterly principal amortization payment required pursuant to Section 2.9.1 (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

2.7 Fees.

(a) Origination Fee. Borrower shall pay to Agent, for its own account, a fee (the "Origination Fee") in the amount of $100,000, which Origination Fee shall be deemed fully earned and non-refundable on the Closing Date.

(b) ~~September 2024 Term Loan Fee. Contemporaneously with the funding of the September 2024 Term Loan, Borrower shall pay to Agent, for the benefit of Lenders, an origination fee in the amount of $385,425, which origination fee shall be deemed fully-earned and non-refundable September 2024 Term Loan Advance Date. For the avoidance of doubt, Borrower hereby directs Agent to withhold funds from the advance of the September 2024 Term Loan to satisfy the origination fee set forth in this Section 2.7(b).~~[Reserved].

(c) Exit Fee. Upon the Termination Date, Borrower shall pay an exit fee (the "Exit Fee") to Agent, for the benefit of Lenders, in an amount equal to (*x*) five percent (5.0%) multiplied by (*y*) the aggregate, original principal amount of ~~the~~(i) Closing Date Term Loan, (ii) Subsequent Term Loan A and (iii) Subsequent Term Loan B advanced hereunder, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

2.8 Prepayment.

2.8.1 Mandatory Prepayment.

(a) Borrower shall prepay the Obligations within three (3) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

(b) In connection with any prepayment of the Term Loan made pursuant to this Section 2.8.1, Borrower shall pay to Agent, for the benefit of Lenders, any amounts that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.8.2.

2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below and Section 2.8.3 hereof, Borrower may, from time to time on at least five (5) Business Days' written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 12:00 noon Dallas time on such day, prepay the Term Loan and all related Obligations in whole or in part at any time prior to the Term Loan Maturity Date; provided, that, (i) ~~any~~ such partial prepayment~~ of the Obligations shall be in an amount equal to at least $1,000,000 or, if the Net Cash Proceeds of such Disposition is less than $1,000,000, the amount of such Net Cash Proceeds, (ii) such partial prepayments~~(s) shall be limited to $~~5,000,000~~11,000,000, in the aggregate, in either case from the ~~September 2024~~Subsequent Term Loan B Advance Date until the two (2) year anniversary of the ~~September 2024~~Subsequent Term Loan B Advance Date, (iii) any such partial prepayments shall be applied (A) first to the outstanding principal balance of the Closing Date Term Loan, (B) second to the then outstanding principal balance of the ~~August 2020~~Subsequent Term Loan A and (C) third otherwise in accordance with Section 2.9.1(b) or Section 2.10.2 (as applicable) and (iv) shall not otherwise reduce any subsequent amortization requirements of Borrower that would otherwise be due and owing on subsequent Payment Dates.

(b) If Borrower makes a prepayment in full (but not in part) of the Term Loan under Section 2.8.2(a) prior to the two (2) year anniversary of the ~~September 2024~~Subsequent Term Loan B Advance Date, it shall pay to Agent, for the benefit of Lenders and in addition to any such prepayment in full of the Term Loan and related Obligations, a prepayment fee on the date of such prepayment calculated as follows (the "~~September 2024~~Subsequent Term Loan B Prepayment Fee"): the additional amount that would be needed to be paid such that the sum of:

(~~w~~i) such ~~September 2024~~Subsequent Term Loan B Prepayment Fee, plus

(~~x~~ii) the aggregate payments actually made in cash to all Lenders on or prior to such date in respect of the principal amount of the ~~September 2024~~Subsequent Term Loan B (excluding, in each case, any amounts paid in respect of costs, indemnifications or reimbursements, any amounts realized by Agent and Lenders in connection with any warrants issued to Agent and Lenders in connection with the Term Loan from time to time and/or any fees paid to Agent and Lenders in connection with any amendments to this Agreement entered into from time to time), plus

(~~y~~iii) the Exit Fee allocable to the ~~September 2024~~Subsequent Term Loan B and the origination fee paid to Agent and Lenders in the amount of $385,425 (or deducted from the ~~September 2024~~Subsequent Term Loan B proceeds, as the case may be) in connection with the ~~September 2024~~Subsequent Term Loan B), plus

(~~z~~iv) the aggregate interest payments actually made in cash to all Lenders on or prior to such date allocable to the ~~September 2024~~Subsequent Term Loan B (excluding, for the avoidance of doubt, any interest accrued at the Default Rate), which results in ~~an amount equal to:~~

, as it relates to any such prepayment prior to the ~~(i) as it relates to any such prepayment prior to the three (3) month anniversary of the September 2024 Term Loan Advance Date, (A) one and five hundredths (1.05) multiplied by (B) the original principal amount of the September 2024 Term Loan;~~

~~(ii) as it relates to any such prepayment on or after the three (3) month anniversary of the September 2024 Term Loan Advance Date but prior to the six (6) month anniversary of the September 2024 Term Loan Advance Date, (A) one and nine hundredths (1.09) multiplied by (B) the original principal amount of the September 2024 Term Loan;~~

~~(iii) as it relates to any such prepayment on or after the six (6) month anniversary of the September 2024 Term Loan Advance Date but prior to the one (1) year anniversary of the September 2024 Term Loan Advance Date, (A) one and sixteen hundredths (1.16) multiplied by (B) the original principal amount of the September 2024 Term Loan; or~~

~~(iv) as it relates to any such prepayment on or after the one (1) year anniversary of the September 2024 Term Loan Advance Date but prior to the~~ two (2) year anniversary of the ~~September 2024~~Subsequent Term Loan B Advance Date, the amount that results in an internal rate of return of eighteen percent (18.0%) on the original principal amount of the ~~September 2024~~Subsequent Term Loan B.

For the avoidance of doubt, no prepayment fee shall otherwise be due and owing in connection with a prepayment in full of the Term Loan on or after the two (2) year anniversary of the ~~September 2024~~Subsequent Term Loan B Advance Date.

(c) For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based Payments that are credited toward the principal of the Loans under Section 2.9.1(b). Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans other than via the application of Revenue-Based

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iv) FOURTH, as it relates to each Payment Date on or after the Payment Date occurring in ~~May~~November 2026, to the payment of all principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in the amount of ~~$3,000,000~~(*x*) ten percent (10%) multiplied by (*y*) the outstanding principal balance of the Term Loan as of the Payment Date in November 2026, on each such Payment Date; and

(v) FIFTH, all remaining amounts to the Borrower.

In the event that the amounts distributed under this clause (b) on any Payment Date are insufficient for payment of the amounts set forth in clauses (i) through (iii) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency, in immediately available funds, within five (5) Business Days of request by Agent.

(c) In the event that Borrower makes any adjustment to Aggregate Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payments.

2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing (including any amounts due pursuant to Section 2.8.2 hereof that may be due and owing on such date) shall be Paid in Full on the Termination Date.

2.10 Payment.

2.10.1 Making of Payments.

Except as set forth in the last sentence of this Section 2.10.1, all payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via ACH or wire transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based Payment for the prior Fiscal Quarter, which statement shall be binding

(i) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;

(j) Investments consisting of the non-cash portion of the consideration received in respect of Dispositions permitted hereunder;

(k) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or expropriation proceeds in accordance with the Loan Documents; and

(l) Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof.

7.11 Restriction of Amendments to Certain Documents.

Not, nor permit any Loan Party to, amend or otherwise modify in any material manner, or waive any rights under, any provisions of any of the Material Contracts (or any replacements thereof) set forth on Schedule 7.11 hereto (as such schedule may be updated by Agent from time to time to include any material contracts, licenses, agreements or similar arrangements to those described on such Schedule as of the Closing Date that are entered into by a Loan Party from time to time after the Closing Date).

7.12 Fiscal Year.

Not change its Fiscal Year.

7.13 Financial Covenants

7.13.1 Minimum Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets to be less than ~~as~~ $1,000,000 as of any date of determination.

7.13.2 ~~7.13.1~~ Minimum Aggregate Revenue.

Not permit the Aggregate Revenue for the applicable period set forth in the table below to be less than the applicable amount set forth in the table below for such period:

Minimum	as of the end of:
Twelve (12) month period ending on September 30, 2024	$27,020,000
Twelve (12) month period ending on December 31,	$28,498,000

EXHIBIT B

Conformed Credit Agreement

(See attached)

CREDIT AGREEMENT

among

ETON PHARMACEUTICALS, INC.,

as Borrower,

SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of November 13, 2019

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CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time, this "Agreement") dated as of November 13, 2019 (the "Closing Date"), among ETON PHARMACEUTICALS, INC., a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as lenders (each a "Lender" and collectively, the "Lenders") and SWK FUNDING LLC, a Delaware limited liability company (in its individual capacity, "SWK"), as Agent for all Lenders.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1 Definitions; Interpretation.

1.1 Definitions.

When used herein the following terms shall have the following meanings:

Account Control Agreement means, individually and collectively, any account control or similar agreement(s) entered into from time to time at Agent's request, among a Loan Party, Agent and any third party bank or financial institution at which such Loan Party maintains a Deposit Account.

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line (excluding, for purposes of Section 7.10 hereof, any pending Acquisitions as of the Closing Date as set forth on Schedule 1.1 hereto), or (d) a merger or consolidation or any other combination (other than a merger, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary).

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any employee, manager, officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. For purposes of the definition of the term "Affiliate," a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower or of any Subsidiary.

Agent means SWK in its capacity as administrative and collateral agent for all Lenders hereunder and any successor thereto in such capacity.

Aggregate Revenue shall have the meaning set forth in Section 2.9.1(a).

Agreement shall have the meaning set forth in the Preamble.

Approved Fund means (a) any fund, trust or similar entity that invests in commercial loans in the ordinary course of business and is advised or managed by (i) a Lender, (ii) an Affiliate of a Lender, (iii) the same investment advisor that manages a Lender or (iv) an Affiliate of an investment advisor that manages a Lender or (b) any finance company, insurance company or other financial institution which temporarily warehouses loans for any Lender or any Person described in clause (a) above.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Authorization shall have the meaning set forth in Section 5.22(b).

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in Dallas, Texas; provided that, with respect to any determination of the Term SOFR Reference Rate, Business Day shall exclude any day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease and as a liability on the balance sheet of such Person.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-l" by Standard & Poor's Ratings Group or "P-l" by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than $500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in clause (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder, (e) money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements, (f) cash, and (g) other short term liquid investments approved in writing by Agent.

Change of Control means the occurrence of any of the following, unless such action has been consented to in advance in writing by Agent in its sole discretion:

(i) any Person acquires the direct or indirect ownership of more than fifty-one percent (51%) of the issued and outstanding voting Equity Interests of Borrower;

(ii) Borrower shall at any time fail to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each of its Subsidiaries;

(iii) a Key Person Event; or

(iv) any "change in/of control" or "sale" or "disposition" or "merger" or similar event as defined in any certificate of incorporation or formation or statement of designations or bylaws or operating agreement, as applicable, of Borrower or in any document governing indebtedness of any Loan Party (other than any Loan Documents) in excess of $250,000, individually or in the aggregate which gives the holder of such indebtedness the right to accelerate or otherwise require payment of such indebtedness prior to the maturity date thereof; or

(v) the sale of all or substantially all of the assets of Borrower or any of its Subsidiaries, the sale of any material portion of the assets relating to the Product, or any merger, consolidation or acquisition by Borrower or any of its Subsidiaries which does not result in such Person being the sole surviving entity.

CLIA means (a) the Clinical Laboratory Improvement Act of 1967, as the same may be amended, modified or supplemented from time to time, including without limitation the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a et seq. ("CLIA 88"), and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder, or (b) any equivalent state statute (and any and all rules or regulations promulgated from time to time thereunder) recognized by the relevant Governmental Authority as (*x*) having an "Equivalency" (as defined by CLIA) to CLIA, and (*y*) offering a compliance and regulatory framework that is applicable to a Person in such state in lieu of CLIA.

Closing Date has the meaning set forth in the Preamble.

Closing Date Term Loan has the meaning set forth in Section 2.2(a).

Closing Date Warrant means that certain warrant issued to SWK Funding LLC by Borrower on the Closing Date.

CMS means the Centers for Medicare and Medicaid Services of the United States of America.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a mortgagee or lessor of real property on which Collateral (or any books and records) is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, the IP Security Agreement, each Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, each Account Control Agreement and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a Lien in any Collateral to Agent for the benefit of Agent and Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender's Pro Rata Term Loan Share.

Compliance Certificate means a certificate substantially in the form of Exhibit B.

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) any Cash Equivalent Investment owned by Borrower and its Subsidiaries on a consolidated basis which are not the subject of any Lien or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Borrower and such Subsidiaries other than the Lien for the benefit of Agent and Lenders, minus (ii) the aggregate amount of Borrower's accounts payable under GAAP that are ninety (90) days or more past due unless the charges for such account payable are being actively disputed by the applicable Loan Party.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means a rate per annum equal to (a) the Term SOFR Rate, plus (b) 6.55 percent (6.55%).

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Controlled Substances Act means the Drug Abuse Prevention and Control Act; Title 21 of the United States Code, 13 U.S.C., as amended from time to time.

Copyrights shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

DEA means the Federal Drug Enforcement Administration of the United States of America.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), other than royalty payments or milestone payments made or to be made by such Person from time to time in connection with an Acquisition, (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of (*x*) the aggregate unpaid amount of such indebtedness and (*y*) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

Debtor Relief Law means, collectively: (a) Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., as amended from time to time, and (b) all other United States or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

Default means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

Default Rate means a rate per annum equal to the lesser of (i) three percent (3%) over the Contract Rate, or (ii) the maximum rate of interest permitted to be charged by applicable laws or regulation governing this Agreement until paid.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party.

Disposition means, as to any asset or right of any Loan Party, (a) any sale, lease, assignment or other transfer (other than to any other Loan Party), but specifically excluding any license or sublicense, (b) any loss, destruction or damage thereof or (c) any condemnation, expropriation, confiscation, requisition, seizure or taking thereof, in each case excluding (i) the sale of inventory or Product in the ordinary course of business, (ii) any issuance of Equity Interests by Borrower and (iii) any other Disposition where the Net Cash Proceeds or any sale, lease, assignment, transfer, condemnation, expropriation, confiscation, requisition, loss, destruction, damage, seizure or taking do not in the aggregate exceed $250,000 in any Fiscal Year.

Division means, with respect to any Person which is an entity, the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity. The word "Divide," when capitalized, shall have a correlative meaning.

Dollar and $ mean lawful money of the United States of America.

Drug Application means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDA Law and Regulation.

EBITDA means, for any Person and its Subsidiaries for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period (and without duplication), (i) Interest Expense, (ii) income tax expense (including tax accruals), (iii) depreciation and amortization, (iv) nonrecurring cash fees, costs and expenses incurred in connection with the Acquisitions of product licenses and product lines from a third party, in relation to any Material Contract or any other Acquisition made prior to the date of this Agreement, (v) non-cash expenses relating to equity-based compensation or purchase accounting, and (vi) other non-recurring and/or non-cash expenses or charges approved by the Agent.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

EM-100 means the preservative-free formulation of ketotifen in ophthalmic solution form indicated for the treatment of allergic conjunctivitis which is the subject of Borrower's Abbreviated New Drug Application No. 208158, submitted on January 19, 2016, with the U.S. FDA.

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock, par value $0.001 per share ("Common Stock") and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, Common Stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes has the meaning set forth in Section 3.1(a).

Exempt Accounts means any Deposit Accounts, securities accounts or other similar accounts (i) into which there are deposited no funds other than those intended solely to cover compensation to employees of the Loan Parties (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for compensation and such contributions from prior periods; or (ii) constituting employee withholding accounts that contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such Person or its employees.

Exit Fee shall have the meaning set forth in Section 2.7(c).

Fair Valuation shall mean the determination of the value of the consolidated assets of a Person on the basis of the amount which may be realized by a willing seller within a reasonable time through collection or sale of such assets at market value on a going concern basis to an interested buyer who is willing to purchase under ordinary selling conditions in an arm's length transaction.

FATCA means Sections 1471 through 1474 of the IRC and any current or future regulations thereunder or official interpretations thereof.

FD&C Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as amended.

FDA means the Food and Drug Administration of the United States of America.

FDA Law and Regulation means the provisions of the FD&C Act and all applicable regulations promulgated by the FDA.

FDA Products means any finished products sold by Borrower or any of the other Loan Parties for itself or for a third party that are subject to applicable Health Care Laws.

Federal Funds Effective Rate means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding day on which commercial banks are open for commercial banking business in New York, New York, by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 2.0%.

Fiscal Quarter means a calendar quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower and its Subsidiaries, which period shall be the twelve (12) month period ending on December 31 of each year.

Foreign Lender means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

GAAP means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign. Governmental Authority shall include any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Health Care Laws.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date executed by each Loan Party signatory thereto in favor of Agent for the benefit of Agent and Lenders.

Hazardous Substances means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, chemical or other substance regulated by any Environmental Law.

Health Care Laws mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b))), the Stark Law (42 U.S.C. §1395nn and §1395(q)), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statues; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009 (collectively, "HIPAA"), and the regulations promulgated thereunder, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable requirements, regulations and guidances issued thereunder by the FDA (including FDA Law and Regulation); (vi) the Controlled Substances Act, as amended, and all applicable requirements, regulations and guidances issued thereunder by the DEA; (vii) CLIA, as amended, and all applicable requirements, regulations, and guidance issued thereunder by the applicable Governmental Authority; (viii) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws or regulatory bodies; (ix) all applicable licensure laws and regulations; (x) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors; and (xi) any and all other applicable health care laws (whether foreign or domestic), regulations, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (xi) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Taxes has the meaning set forth in Section 3.1(a).

Intellectual Property shall mean all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses (as defined in the Guarantee and Collateral Agreement), internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any Intellectual Property rights relating thereto) and Copyright Licenses (as defined in the Guarantee and Collateral Agreement) and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses (as defined in the Guarantee and Collateral Agreement); Mask Works (as defined in the Guarantee and Collateral Agreement); industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

Interest Expense means for any Person and its Subsidiaries for any period the consolidated interest expense of such Person and its Subsidiaries for such period (including all imputed interest on Capital Leases).

Inventory has the meaning set forth in the Guarantee and Collateral Agreement as the context requires.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person (other than travel and similar advances to employees in the ordinary course of business), or (d) the making of an Acquisition.

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent for the benefit of Agent and Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

Keyman Life Insurance Policy has the meaning assigned in Section 6.3(e) hereof.

Key Person means Sean Brynjelsen.

Key Person Event means, unless such actions are consented to in advance in writing by Agent, a Key Person shall no longer serve in his respective, current executive capacity with Borrower, unless such Key Person is replaced within ninety (90) days with (in each case) a person of like qualification and experience to assume the respective responsibilities of such departing Key Person and which has been approved in writing by Agent to assume such responsibility and capacity of the applicable departing Key Person, which approval shall not be unreasonably withheld.

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses.

Lenders has the meaning set forth in the Preamble.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, the Collateral Documents and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries.

Margin Stock means any “margin stock” as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material and adverse effect upon, the condition (financial or otherwise), operations, assets, business, prospects or properties of the Loan Parties taken as a whole, (b) a material impairment of the ability of any Loan Party to perform any of its payment Obligations under any Loan Document, or (c) a material and adverse effect upon any material portion of the Collateral under the Collateral Documents or upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document.

Material Contract has the meaning assigned in Section 5.21 hereof.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which Borrower or any member of the Controlled Group may have any liability.

Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Loan Party pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (*provided* that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (*provided* that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds), and (vi)(A) with respect to any Disposition described in clauses (a), (b) or (c) of the definition thereof, all money actually applied within one-hundred eighty (180) days to replace such assets or otherwise added to the working capital of the business of Borrower and the Subsidiaries, and (B) with respect to any Disposition, all money actually applied within one-hundred eighty (180) days to repair or replace the assets in question or to repair or reconstruct damaged property or property affected by loss, destruction, damage, condemnation, expropriation, confiscation, requisition, seizure or taking.

Net Sales means the gross amount billed or invoiced by Borrower and its Subsidiaries for Services and for the sale of Products (including products and services ancillary thereto) to independent customers, less deductions for (a) quantity, trade, cash or other discounts, allowances, bad debts, write-offs, credits or rebates (including customer rebates) actually allowed or taken, (b) amounts deducted, repaid or credited by reason of rejections or returns of goods and government mandated rebates, or because of chargebacks or retroactive price reductions, and (c) taxes, tariffs, duties or other governmental charges or assessments (including any sales, value added or similar taxes other than an income tax) levied, absorbed or otherwise imposed on or with respect to the production, sale, transportation, delivery or use of pharmaceutical products. A Product or Service shall be considered sold and/or provided when billed or invoiced. To the extent applicable, components of Net Sales shall be determined in the ordinary course of business in accordance with historical practice and using the accrual method of accounting in accordance with GAAP. For the purposes of calculating Net Sales, Lenders and Agent understand and agree that (i) Affiliates of a Borrower shall not be regarded as independent customers and (ii) Net Sales shall not include Products distributed for product development purposes, including for use in pre-clinical trials.

Note means a promissory note substantially in the form of Exhibit C.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement, any other Loan Document or any other document or instrument executed in connection herewith or therewith which are owed to any Lender or Affiliate of a Lender, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. For the avoidance of doubt, “Obligations” shall include Borrower’s obligation to pay any amounts due under Sections 2.7 and 2.8.2 and payable on such date of determination.

OFAC shall mean the U.S. Department of Treasury's Office of Foreign Asset Control.

Origination Fee shall have the meaning set forth in Section 2.7(a).

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations).

Patents shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title and interest in and to: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

Payment Date means the fifteenth (15^{th}) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15^{th} day is not a Business Day), commencing with February 17, 2020.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a "pension plan," as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including without limitation all registrations with Governmental Authorities.

Permitted Liens means Liens permitted by Section 7.2.

Person means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Prior Debt means the Debt listed on Schedule 4.1.

Pro Rata Term Loan Share means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) specified opposite such Lender's name on Annex I which percentage represents the aggregate percentage of the Term Loan Commitment held by such Lender, which percentage shall be with respect to the outstanding balance of the Term Loan as of any date of determination after the Term Loan Commitment has terminated.

Product means any products manufactured, sold, developed, tested or marketed by Borrower or any of its Subsidiaries, including, without limitation, those products set forth on Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2); *provided, however*, that if Borrower shall fail to comply with the obligations under Section 6.1.2 to give notice to Agent and update Schedule 5.18(b) prior to manufacturing, selling, developing, testing or marketing any new Product, any such undisclosed Product shall be deemed to be included in this definition; and *provided, further*, that products manufactured by Borrower for unaffiliated third parties shall not be deemed "Products" hereunder.

Raised Cash means net cash proceeds resulting from the issuance by Borrower of additional Equity Interests on terms and conditions satisfactory to Agent in its commercially-reasonable discretion other than a public offering of Common Stock registered under the Securities Act of 1933, as amended.

Registered Intellectual Property means all applications, registrations and recordings for or of Patents, Trademarks or Copyrights filed by a Loan Party with any Governmental Authority, all internet domain name registrations owned by a Loan Party, and all proprietary software owned by a Loan Party.

Required Lenders means Lenders having an aggregate Pro Rata Term Loan Share in excess of fifty percent (50%), collectively.

Required Permit means a Permit (a) required under applicable law for the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under any laws applicable to the business of Borrower or any of its Subsidiaries (including, without limitation, any Health Care Laws) or any Drug Application (including without limitation, at any point in time, all licenses, approvals and permits issued by the FDA, CMS, or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of any Product by Borrower or any of its Subsidiaries as such activities are being conducted by Borrower or its Subsidiaries with respect to such Product at such time), and (b) required by any Person from which Borrower or any of its Subsidiaries have received an accreditation.

Responsible Officer shall mean the president, vice president or secretary of a Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, or the treasurer of a Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance acceptable to Agent in its sole discretion.

Revenue-Based Payment has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Borrower and its Subsidiaries with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

Services means services provided by Borrower or any Affiliate of Borrower to un-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

SOFR shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

Solvent means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become due; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they become due in the normal course of business; and (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they become due.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party upon terms acceptable to Agent in its commercially-reasonable discretion and that is subordinated to the Obligations pursuant to a subordination agreement acceptable to Agent in its commercially-reasonable discretion entered into between Agent, any applicable Loan Party and the subordinated creditor(s).

Subsequent Term Loan A has the meaning set forth in Section 2.2(b) hereof.

Subsequent Term Loan B has the meaning set forth in Section 2.2(c) hereof.

Subsequent Term Loan C has the meaning set forth in Section 2.2(e) hereof.

Subsequent Term Loan C Advance Date means the date on which the Subsequent Term Loan C is made to the Borrower.

Subsequent Term Loan C Advance Conditions means the satisfaction or waiver (in Agent's reasonable discretion) in connection with the Subsequent Term Loan C Advance, if any:

(i) no Event of Default shall have occurred and be continuing on the Subsequent Term Loan C Advance Date;

(ii) Agent shall have received:

a. an officer's certificate of Borrower with resolutions substantially in the same form as delivered on the Closing Date;

b. a fully-executed asset purchase agreement (the "Asset Purchase Agreement") in relation to the assets to be purchased with the proceeds of such advance together with all other material documents related thereto as reasonably requested by Agent;

c. updated schedules to the Guarantee and Collateral Agreement and IP Security Agreement incorporating the assets to be purchased pursuant to the Asset Purchase Agreement; and

(iii) Agent shall have approved the material terms of the transaction(s) subject to such Asset Purchase Agreement.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

SWK has the meaning set forth in the Preamble.

Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.2, and shall, for the avoidance of doubt, include the Closing Date Term Loan, Subsequent Term Loan A, Subsequent Term Loan B and Subsequent Term Loan C.

Term Loan Commitment means $40,000,000.

Term Loan Maturity Date means December 17, 2027.

Term SOFR Administrator shall mean the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion after consultation with Borrower).

Term SOFR Rate shall mean the Term SOFR Reference Rate for a three (3) month period that is ten (10) Business Days prior to each Payment Date (such day, the "Periodic Term SOFR Determination Day"), and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such three (3) month period, as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate was published by the Term SOFR Administrator. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the Term SOFR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent shall, in consultation with Borrower, endeavor to establish an alternate rate of interest to the Term SOFR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United States at such time, and, if requested by Agent, Agent and Lenders at such time party hereto and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (including, for the avoidance of doubt, any amendments to the definition of "Contract Rate" to ensure that the interest rate payable by Borrower hereunder is substantially similar to the interest rate that would otherwise be paid prior to the selection of such alternate rate of interest), and (ii) in no event shall the "Term SOFR Rate" or any such alternate rate of interest to the Term SOFR Rate ever be less than two and three-quarters of one percent (2.75%).

Term SOFR Reference Rate shall mean the forward-looking term rate based on SOFR.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through any other mandatory or voluntary prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Trademarks shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) all of such Loan Party's (or if referring to another Person, such other Person's) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the Equity Interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2 Interpretation.

(a) In the case of this Agreement and each other Loan Document, (i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (ii) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (iii) the term "including" is not limiting and means "including but not limited to;" (iv) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including;" (v) unless otherwise expressly provided in such Loan Document, (A) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (B) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (vi) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (vii) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower's, Agent's or Lenders' involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (*x*) within the reasonable discretion of Agent and/or Lenders; and (*y*) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

Section 2 Credit Facility.

2.1 [Reserved].

2.2 Loan Procedures.

(a) The Lenders, severally and for themselves alone, made (i) a term loan (the "Closing Date Term Loan") on the Closing Date in the original principal amount of $5,000,000.00.

(b) On or about August 11, 2020, the Lenders, severally and for themselves alone, made an additional term loan in the original principal amount of $2,000,000.00, resulted in an aggregate, outstanding principal balance of the Term Loan of $7,000,000.00 immediately following the funding of such advance (the "Subsequent Term Loan A").

(c) On or about December 17, 2024, the Lenders, severally and for themselves alone, made an additional term loan in the original principal amount of $25,695,000, resulted in an aggregate, outstanding principal balance of the Term Loan of $30,000,000.00 immediately following the funding of such advance (the "Subsequent Term Loan B").

(d) As of April 9, 2026, the outstanding principal balance of the Term Loan was $30,000,000.00 prior to the funding of the Subsequent Term Loan C (as defined below).

(e) Upon satisfaction of the Subsequent Term Loan C Advance Conditions, and at the request of Borrower at any time prior to the Payment Date occurring in November 2026, the Lenders, severally and for themselves alone, shall make an additional term loan in the original principal amount of $10,000,000 (the "Subsequent Term Loan C"). Whenever Borrower desires that Lenders make the Subsequent Term Loan C, Borrower shall deliver to Agent written notice (which may be by email) no later than noon (New York City time) at least one (1) Business Day in advance of the proposed funding date of the Subsequent Term Loan C. Promptly upon receipt by Agent of such written notice, Agent shall notify each Lender of the proposed borrowing of the Subsequent Term Loan C.

(f) The Closing Date Term Loan, the Subsequent Term Loan A, the Subsequent Term Loan B and the Subsequent Term Loan C (if any) shall be deemed a single term loan (each such loan individually and collectively, the "Term Loan"). The Term Loan is not a revolving credit facility, and therefore, any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.3 Commitments Several.

The failure of any Lender to make any advance of the Term Loan shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender; provided, however, that this Section 2.3 shall not relieve any Lender from liability for a the failure of such Lender to make a Loan required to be made by such Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, set-off, counterclaim or defense for any reason against Agent and Lenders. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, set-off, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by ACH or wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension, satisfaction, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshalling of assets or to require foreclosure sales in a particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) [reserved], and (h) any defense to the obligation to make any payments required under the Loan Documents, including the obligation to pay taxes based on any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any of the Collateral, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the "Obligors"), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its liability for payment of the Loan shall not be affected or impaired by any determination that any security interest or lien taken by Agent for the benefit of Agent and Lenders to secure the Loan is invalid or unperfected. Borrower acknowledges, warrants and represents in connection with each waiver of any right or remedy of Borrower contained in any Loan Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

2.5 Loan Accounting.

2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.5.2 Notes.

At the request of any Lender, the Loan of such Lender shall be evidenced by a Note, with appropriate insertions, payable to such Lender in a face principal amount equal to such Lender's Pro Rata Term Loan Share and payable in such amounts and on such dates as are set forth herein.

2.6 Payment of Interest.

2.6.1 Interest Rates.

(a) The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate (as may be adjusted from time to time in accordance with this Section 2.6.1). Whenever, subsequent to the date hereof, the Term SOFR Rate is increased or decreased (as determined on the date that is two (2) Business Days prior to each Payment Date), the Contract Rate, as set forth herein, shall be similarly changed effective as of such subsequent Payment Date, without notice or demand of any kind by an amount equal to the amount of such change in the Term SOFR Rate on the date that is two (2) Business Days prior to each such Payment Date. The interest due on the principal balance of the Loan outstanding as of any Payment Date shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty (360) days and shall be calculated by determining the daily principal balance outstanding for each day of such period in question. The daily rate shall be equal to 1/360th times the Contract Rate. If any statement furnished by Agent for the amount of a payment due exceeded the actual amount that should have been paid because the Term SOFR Rate decreased and such decrease was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall receive a credit for the overpayment, which credit shall be applied towards the next subsequent payment due hereunder. If any statement furnished by Agent for the amount of a payment due was less than the actual amount that should have been paid because the Term SOFR Rate increased and such increase was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder.

(b) Borrower recognizes and acknowledges that any default on any payment, or portion thereof, due hereunder or to be made under any of the other Loan Documents, will result in losses and additional expenses to Agent in servicing the Loan, and in losses due to Lenders' loss of the use of funds not timely received. Borrower further acknowledges and agrees that in the event of any such Default, Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon the Term Loan Maturity Date and/or upon the occurrence and during the existence of an Event of Default (or upon any acceleration), interest shall automatically accrue hereunder, without notice to Borrower, at the Default Rate. The Default Rate shall be calculated and due from the date that the Default occurred which led to the Event of Default without regard to any grace or cure period as may be applicable and shall be payable upon demand.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate for any Loan (if applicable), together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder (if applicable), together with all charges payable in respect of the Loan, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest (if any) and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest (if any) and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

2.6.2 Payments of Interest and Principal.

Borrower shall pay to Lenders all accrued interest on the Loan in arrears on each Payment Date, upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Any partial prepayment of the Loan shall be applied in inverse order of maturity and so shall not reduce the amount of any quarterly principal amortization payment required pursuant to Section 2.9.1 (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

2.7 Fees.

(a) Origination Fee. Borrower shall pay to Agent, for its own account, a fee (the "Origination Fee") in the amount of $100,000, which Origination Fee shall be deemed fully earned and non-refundable on the Closing Date.

(b) [Reserved].

(c) Exit Fee. Upon the Termination Date, Borrower shall pay an exit fee (the "Exit Fee") to Agent, for the benefit of Lenders, in an amount equal to (*x*) five percent (5.0%) multiplied by (*y*) the aggregate, original principal amount of (i) Closing Date Term Loan, (ii) Subsequent Term Loan A and (iii) Subsequent Term Loan B advanced hereunder, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

2.8 Prepayment.

2.8.1 Mandatory Prepayment.

(a) Borrower shall prepay the Obligations within three (3) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

(b) In connection with any prepayment of the Term Loan made pursuant to this Section 2.8.1, Borrower shall pay to Agent, for the benefit of Lenders, any amounts that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.8.2.

2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below and Section 2.8.3 hereof, Borrower may, from time to time on at least five (5) Business Days' written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 12:00 noon Dallas time on such day, prepay the Term Loan and all related Obligations in whole or in part at any time prior to the Term Loan Maturity Date; provided, that, (i) such partial prepayment(s) shall be limited to $11,000,000, in the aggregate, in either case from the Subsequent Term Loan B Advance Date until the two (2) year anniversary of the Subsequent Term Loan B Advance Date, (iii) any such partial prepayments shall be applied (A) first to the outstanding principal balance of the Closing Date Term Loan, (B) second to the then outstanding principal balance of the Subsequent Term Loan A and (C) third otherwise in accordance with Section 2.9.1(b) or Section 2.10.2 (as applicable) and (iv) shall not otherwise reduce any subsequent amortization requirements of Borrower that would otherwise be due and owing on subsequent Payment Dates.

(b) If Borrower makes a prepayment in full (but not in part) of the Term Loan under Section 2.8.2(a) prior to the two (2) year anniversary of the Subsequent Term Loan B Advance Date, it shall pay to Agent, for the benefit of Lenders and in addition to any such prepayment in full of the Term Loan and related Obligations, a prepayment fee on the date of such prepayment calculated as follows (the "Subsequent Term Loan B Prepayment Fee"): the additional amount that would be needed to be paid such that the sum of:

(i) such Subsequent Term Loan B Prepayment Fee, plus

(ii) the aggregate payments actually made in cash to all Lenders on or prior to such date in respect of the principal amount of the Subsequent Term Loan B (excluding, in each case, any amounts paid in respect of costs, indemnifications or reimbursements, any amounts realized by Agent and Lenders in connection with any warrants issued to Agent and Lenders in connection with the Term Loan from time to time and/or any fees paid to Agent and Lenders in connection with any amendments to this Agreement entered into from time to time), plus

(iii) the Exit Fee allocable to the Subsequent Term Loan B and the origination fee paid to Agent and Lenders in the amount of $385,425 (or deducted from the Subsequent Term Loan B proceeds, as the case may be) in connection with the Subsequent Term Loan B), plus

(iv) the aggregate interest payments actually made in cash to all Lenders on or prior to such date allocable to the Subsequent Term Loan B (excluding, for the avoidance of doubt, any interest accrued at the Default Rate), which results in, as it relates to any such prepayment prior to the two (2) year anniversary of the Subsequent Term Loan B Advance Date, the amount that results in an internal rate of return of eighteen percent (18.0%) on the original principal amount of the Subsequent Term Loan B.

For the avoidance of doubt, no prepayment fee shall otherwise be due and owing in connection with a prepayment in full of the Term Loan on or after the two (2) year anniversary of the Subsequent Term Loan B Advance Date.

(c) For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based Payments that are credited toward the principal of the Loans under Section 2.9.1(b). Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans other than via the application of Revenue-Based Payments made pursuant to Section 2.9.1 or Section 2.10.2, as applicable, or prepayments in accordance with Section 2.8.1 or Section 2.8.3 shall be limited and governed by this Section 2.8.2. Notwithstanding anything in this Section 2.8 to the contrary, after the occurrence and during the continuation of a material default hereunder by a Lender or Agent, Borrower may prepay all or any part of the Loans without the payment of any such prepayment penalty or premium described in this Section 2.8.

2.9 Repayment of Term Loan.

2.9.1 Revenue-Based Payment.

(a) During the period commencing on the date hereof until the Obligations are Paid in Full, Borrower promises to pay to Agent, for the account of each Lender according to its Pro Rata Term Loan Share, an amount based on a percentage of the aggregate of the Net Sales, Royalties and any other income or revenue realized by Borrower and/or its Subsidiaries, on a consolidated basis, in accordance with GAAP (collectively, the "Aggregate Revenue") in each Fiscal Quarter (the "Revenue-Based Payment"), which will be applied to the Obligations as provided in clause (b) below. The Revenue-Based Payment with respect to each Fiscal Quarter shall be payable on the Payment Date next following the end of such Fiscal Quarter. Commencing with the Fiscal Quarter beginning January 1, 2019, the Revenue-Based Payment with respect to each Fiscal Quarter shall be equal to:

(i) the aggregate Revenue-Based Payments payable during the period commencing as of January 1 of the Fiscal Year of which such Fiscal Quarter is part, through the end of such Fiscal Quarter (such elapsed portion of the Fiscal Year, the "Elapsed Period"), calculated as the net sum of:

(A) One hundred percent (100.00%) of Aggregate Revenue during the Elapsed Period up to and including $10,000,000; plus

(B) Fifty percent (50.00%) of Aggregate Revenue during the Elapsed Period greater than $10,000,000; minus

(ii) the aggregate amount of Revenue-Based Payments, if any, made pursuant to clauses (i) through (iv) of Section 2.9.1(b), with respect to prior Fiscal Quarters in such Fiscal Year; *provided* that the Revenue-Based Payment is payable solely upon Aggregate Revenue in a given Fiscal Year, and will not be calculated on a cumulative, year-over-year basis.

For the avoidance of any doubt, Borrower may calculate the net amount due under this Section 2.9.1(a) and pay to Agent only such net amount due. Borrower is not obligated to pay the entire amounts specified in Sections 2.9.1(a)(i)(A) and (B) to Agent and then have Agent return to Borrower the balance after subtracting the amounts specified in Section 2.9.1(a)(ii).

(b) So long as no Event of Default has occurred and is continuing and until the Obligations have been Paid in Full, each Revenue-Based Payment on each Payment Date will be applied in the following priority:

(i) FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to Agent pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral;

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iv) FOURTH, as it relates to each Payment Date on or after the Payment Date occurring in November 2026, to the payment of all principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in the amount of (*x*) ten percent (10%) multiplied by (*y*) the outstanding principal balance of the Term Loan as of the Payment Date in November 2026, on each such Payment Date; and

(v) FIFTH, all remaining amounts to the Borrower.

In the event that the amounts distributed under this clause (b) on any Payment Date are insufficient for payment of the amounts set forth in clauses (i) through (iii) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency, in immediately available funds, within five (5) Business Days of request by Agent.

(c) In the event that Borrower makes any adjustment to Aggregate Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payments.

2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing (including any amounts due pursuant to Section 2.8.2 hereof that may be due and owing on such date) shall be Paid in Full on the Termination Date.

2.10 Payment.

2.10.1 Making of Payments.

Except as set forth in the last sentence of this Section 2.10.1, all payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via ACH or wire transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based Payment for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

2.10.2 Application of Payments and Proceeds Following an Event of Default.

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds of Collateral, in each case as received by Agent, to the payment of the Obligations in the order and priority as determined by Agent in its sole discretion.

2.10.3 Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

2.10.4 Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of principal of, interest on or fees in relation to any Loan, but excluding any payment pursuant to Section 3.1, 3.2, 10.5 or 10.8) in excess of its applicable Pro Rata Term Loan Share of payments and other recoveries obtained by all Lenders on account of principal of, interest on or fees in relation to such Term Loan then held by them, then such Lender shall purchase from the other Lenders such participations in the Loans held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided* that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

Section 3 Yield Protection.

3.1 Taxes.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("Taxes"), excluding (i) taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise taxes, imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or, in the case of any Lender, in which its applicable lending office is located, (ii) any branch profit taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business; (iii) in the case of any Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office; (iv) in the case of any U.S. Lender, any United States federal backup withholding tax; and (v) taxes imposed under FATCA (items in clauses (i) through (v), "Excluded Taxes," and all Taxes other than Excluded Taxes, "Indemnified Taxes"). If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (*w*) make such withholding or deduction; (*x*) pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted; (*y*) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (*z*) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required. To the extent that any amounts shall ever be paid by Borrower in respect of Indemnified Taxes, such amounts shall, for greater certainty, be considered to have accrued and to have been paid by Borrower as interest on the Loans.

(b) Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party's own gross negligence or willful misconduct. Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided*, *however*, that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c) Each Foreign Lender that is a party hereto on the Closing Date or becomes an assignee of an interest under this Agreement under Section 10.8.1 after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

(i) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;

(ii) two duly completed and executed originals of IRS Form W-8ECI;

(iii) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (*x*) a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, (*y*) a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (*z*) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or

(iv) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BENE), IRS Form W-9 or a portfolio interest certificate described in clause (iii) above from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent. Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c).

(d) Without limiting the foregoing, each Lender shall timely comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any documentation reasonably requested by Borrower or Agent sufficient for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements.

(e) If Agent or a Lender determines that it is entitled to or has received a refund of any Taxes for which it has been indemnified by Borrower (or another Loan Party) or with respect to which Borrower (or another Loan Party) shall have paid additional amounts pursuant to this Section 3.1, it shall promptly notify Borrower of such refund, and promptly make an appropriate claim to the relevant Governmental Authority for such refund (if it has not previously done so). If Agent or a Lender receives a refund (whether or not pursuant to such claim) of such Taxes, it shall promptly pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section 3.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that Borrower, upon the request of Agent or such Lender, agrees to repay to Agent or such Lender the amount paid over to Borrower in the event Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.1(e) shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to Borrower or any other Person or to alter its internal practices or procedures with respect to the administration of Taxes.

3.2 Increased Cost.

(a) If, after the Closing Date, the adoption of, or any change in, any applicable law, rule or regulation, or any change in the interpretation or administration of any applicable law, rule or regulation by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), or compliance by any Lender with any request or directive (whether or not having the force of law) issued after the Closing Date of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender; or (ii) shall impose on any Lender any other condition affecting its ability to make loans based on the Term SOFR Rate or its obligation to make loans based on the Term SOFR Rate; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any loan based on the Term SOFR Rate, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), and without duplication of other payment obligations of Borrower hereunder (including pursuant to Section 3.1), Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. For the avoidance of doubt, this clause (a) will not apply to any such increased costs or reductions resulting from Taxes, as to which Section 3.1 shall govern.

(b) If any Lender shall reasonably determine that any change after the Closing Date in, or the adoption or phase-in after the Closing Date of, any applicable law, rule or regulation regarding capital adequacy, or any change after the Closing Date in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive issued after the Closing Date regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, within five (5) Business Days of demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect.

(c) Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under this Section 3.2, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (i) make, issue, fund or maintain its Loans through another office of such Lender, or (ii) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to this Section 3.2 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this clause (c) unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this clause (c) (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Agent) shall be conclusive absent manifest error.

3.3 Funding Losses.

Borrower hereby agrees that upon demand by any Lender (which demand shall be accompanied by a statement setting forth the basis for the amount being claimed, a copy of which shall be furnished to Agent), Borrower will indemnify such Lender against any net loss or expense which such Lender has actually sustained or incurred (including any reasonable, documented net loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain the Term Loan subject to the Term SOFR Rate, as reasonably determined by such Lender) as a result of (a) any payment or prepayment of the Term Loan of such Lender on a date other than the Term Loan Maturity Date or (b) any failure of Borrower to borrow any Loan on a date specified therefor in a notice of borrowing pursuant to this Agreement. For the purposes of this Section 3.3, all determinations shall be made as if such Lender had actually funded and maintained the Term Loan through the purchase of deposits having a maturity corresponding to the Loan and bearing an interest rate equal to the Term SOFR Rate during such period of time being measured. Nothing in this Section 3.3 shall be interpreted to obligate the Loan Parties to indemnify any Lender for lost profits associated with any event described herein.

3.4 Manner of Funding; Alternate Funding Offices.

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it may determine at its sole discretion. Each Lender may, if it so elects, fulfill its commitment to make the Term Loan by causing any branch or Affiliate of such Lender to make such Loan; *provided* that in such event for the purposes of this Agreement (other than Section 3.1) such Loan shall be deemed to have been made by such Lender and the obligation of Borrower to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate.

3.5 Conclusiveness of Statements; Survival.

Determinations and statements of any Lender pursuant to Section 3.1, 3.2, 3.3 or 3.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2, and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4 Conditions Precedent.

The obligation of each Lender to make its Loan hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent.

4.1 Prior Debt.

The Prior Debt, if any, has been (or concurrently with the initial borrowing will be) paid in full and all related Liens, if any, have been (or concurrently with the initial borrowing will be) released.

4.2 Delivery of Loan Documents.

Borrower shall have delivered the following documents in form and substance acceptable to Agent in its sole discretion (and, as applicable, duly executed and dated the Closing Date or an earlier date satisfactory to Agent):

(a) Loan Documents. The Loan Documents to which any Loan Party is a party, each duly executed by a Responsible Officer of each Loan Party and the other parties thereto (except Agent and the Lenders), and each other Person (except Agent and the Lenders) shall have delivered to Agent and Lenders the Loan Documents to which it is a party, each duly executed and delivered by such Person and the other parties thereto (except Agent and the Lenders).

(b) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide Agent, for the benefit of Agent and Lenders, perfected first priority Liens in the Collateral.

(c) Lien Searches. Copies of Uniform Commercial Code, foreign, state and county search reports listing all effective financing statements filed and other Liens of record against any Loan Party, with copies of any financing statements and applicable searches of the records of the U.S. Patent and Trademark Office and the U.S. Copyright Office performed with respect to each Loan Party, all in each jurisdiction reasonably determined by Agent.

(d) Collateral Access Agreements. Fully executed (except by Agent and the Lenders) Collateral Access Agreements reasonably requested by Agent with respect to the Collateral.

(e) Payoff; Release. Payoff letters with respect to the repayment in full of all Prior Debt, termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(f) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority, (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction reasonably requested by Agent, (iii) bylaws (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) signature and incumbency certificates of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

(g) Closing Certificate. A certificate executed by a Responsible Officer of Borrower, which shall constitute a representation and warranty by Borrower as of the Closing Date that the conditions contained in this Section 4 have been satisfied.

(h) Opinions of Counsel. Opinions of counsel for each Loan Party in form and substance acceptable to Agent regarding certain closing matters, and Borrower hereby requests such counsel to deliver such opinions and authorizes Agent and Lenders to rely thereon.

(i) Insurance. (a) Certificates or other evidence of insurance in effect as required by Section 6.3(c) and (d), with endorsements naming Agent as lenders' loss payee and/or additional insured, as applicable, and (b) copies of the Keyman Life Insurance Policy, together with any additional documentation necessary to grant Agent a perfected assignment of such Keyman Life Insurance Policy as required by Section 6.3(e).

(j) Solvency Certificate. Agent shall have received a certificate of the chief financial officer (or, in the absence of a chief financial officer, the chief executive officer or manager) of Borrower, in his or her capacity as such and not in his or her individual capacity, in form and substance reasonably satisfactory to Agent, certifying (i) that Borrower is Solvent after giving effect to the transactions and the indebtedness contemplated by the Loan Documents, and (ii) as to Borrower's financial resources and anticipated ability to meet its obligations and liabilities as they become due, to the effect that as of the Closing Date, and after giving effect to such transaction and indebtedness: (A) the assets of Borrower, individually and on a consolidated basis, at a Fair Valuation, exceed the total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of Borrower, and (B) no unreasonably small capital base with which to engage in its anticipated business exists with respect to Borrower.

(k) Financials. The financial statements, projections and pro forma balance sheet described in Section 5.4.

(l) Account Control Agreements. The fully-executed Account Control Agreement in relation to each of the Deposit Accounts set forth on Schedule 7.14 hereto.

(m) Consents. Evidence that all necessary consents, permits and approvals (governmental or otherwise) required for the execution, delivery and performance by each Loan Party of the Loan Documents have been duly obtained and are in full force and effect.

(n) Other Documents. Such other certificates, documents and agreements as Agent or any Lender may reasonably request.

4.3 Fees. The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the Legal Costs), required to be paid under the Loan Documents on or before the Closing Date. All such amounts will be paid with proceeds of the initial advance of the Term Loan and any previous expense deposits made with Agent on or before the Closing Date and will be reflected in the funding instructions given by Borrower to Agent on or before the Closing Date.

4.4 Closing Date Warrant. Agent shall have received the fully executed Closing Date Warrant.

4.5 Representations, Warranties, Defaults. As of the Closing Date, after giving effect to the making of the Loans, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all material respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date) and (b) no Default or Event of Default shall exist. The acceptance of the Term Loan by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.5 have been satisfied.

4.6 Diligence. Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be satisfactory in form and substance to Lenders, including, without limitation, (i) an examination of (A) Borrower's projected Aggregate Revenue for such periods as required by Lenders, (B) such valuations of Borrower and its assets as Lenders shall require (C) the terms and conditions of all obligations owed by Borrower deemed material by Lenders, the results of which shall be satisfactory in form and substance to Lenders and (D) background checks with respect to the managers, officers and owners of Borrower required by Agent; (ii) an examination of the Collateral, the financial statements and the books, records, business, obligations, financial condition and operational state of Borrower, and Borrower shall have demonstrated to Lender's reasonable satisfaction that (*x*) no operations of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could result in any expenditure or liability deemed material by Lenders, and (*y*) Borrower has no liabilities or obligations (whether contingent or otherwise) that are deemed material by Lenders.

4.7 Corporate Matters. All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those relating to corporate and capital structures of Borrower) shall be reasonably satisfactory to Agent.

4.8 No Felonies or Indictable Offenses. No Loan Party nor, to Borrower's knowledge, any of their respective Affiliates nor any of their officers or key management personnel shall have been charged with or be under active investigation for a felony crime or indictable offense.

4.9 No Material Adverse Effect. There shall not be any Debt or material obligations (other than those permitted pursuant to Section 7.1 hereof or as otherwise set forth in the Schedules to this Agreement) of any nature with respect to any Loan Party which could reasonably be likely to have a Material Adverse Effect.

Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date and the date of any additional advance of the Term Loan made by Lenders pursuant to Section 2.2 that:

5.1 Organization.

Each Loan Party is validly existing and in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly qualified to do business in each jurisdiction set forth on Schedule 5.1, which are all of the jurisdictions in which failure to so qualify could reasonably be likely to have or result in a Material Adverse Effect.

5.2 Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guaranty monies hereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any Health Care Law), (ii) the charter, by-laws or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents).

5.3 Validity; Binding Nature.

Each of this Agreement and each other Loan Document to which any Loan Party is a party, as applicable, is the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

5.4 Financial Condition.

(a) The audited consolidated financial statements of Borrower and the unaudited consolidated financial statements of Borrower previously delivered to Agent in connection with this Agreement were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower as at such dates and the results of its operations for the periods then ended.

(b) The consolidated financial projections (including an operating budget and a cash flow budget) of Borrower and its Subsidiaries delivered to Agent and Lenders on or prior to the date hereof (i) were prepared by Borrower in good faith and (ii) were prepared in accordance with assumptions for which Borrower believes it has a reasonable basis, and the accompanying consolidated and consolidating pro forma unaudited balance sheet of Borrower and its Subsidiaries as of the date of delivery thereof, adjusted to give effect to the financings contemplated hereby as if such transactions had occurred on such date, is consistent in all material respects with such projections (it being understood that the projections are not a guaranty of future performance and that actual results during the period covered by the projections may materially differ from the projected results therein).

5.5 No Material Adverse Effect.

Since December 31, 2018, there has been no material adverse change in the financial condition, operations, assets, business or properties of Borrower taken as a whole.

5.6 Litigation.

No litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding, to Borrower's knowledge, is pending or threatened against any Loan Party that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Other than any liability incidental to such litigation or proceedings, no Loan Party has any material Contingent Obligations not listed on Schedule 7.1 or disclosed in the financial statements specified in Section 5.4(a).

5.7 Ownership of Properties; Liens.

Borrower and each other Loan Party owns, or leases or licenses, as applicable, all of its material properties and assets, tangible and intangible, of any nature whatsoever that it purports to own, or lease, as applicable (including Intellectual Property), free and clear of all Liens and charges and claims (including infringement claims with respect to Intellectual Property), except Permitted Liens and as set forth on Schedule 5.7.

5.8 Capitalization.

All issued and outstanding Equity Interests of Loan Parties are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable state and federal laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests of each Loan Party as of the Closing Date as well as all Persons owning more than ten percent (10%) of the outstanding Equity Interests in each such Loan Party as of the Closing Date.

5.9 Pension Plans.

No Loan Party has, nor to Borrower's knowledge has any Loan Party ever had, a Pension Plan.

5.10 Investment Company Act.

No Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," within the meaning of the Investment Company Act of 1940.

5.11 No Default.

No Event of Default or Default exists or would result from the incurrence by Borrower of any Debt hereunder or under any other Loan Document or as a result of any Loan Party entering into the Loan Documents to which it is a party.

5.12 Margin Stock.

No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. No portion of the Obligations is secured directly or indirectly by Margin Stock.

5.13 Taxes.

Each Loan Party has filed, or caused to be filed, all federal, state, foreign and other tax returns and reports required by law to have been filed by it and has paid all federal, state, foreign and other taxes and governmental charges thereby shown to be owing, except any such taxes or charges (a) that are not delinquent or (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books.

5.14 Solvency.

Immediately prior to and after giving effect to each borrowing hereunder and the use of the proceeds hereof, Borrower is, and will be, Solvent.

5.15 Environmental Matters.

The on-going operations of Loan Parties comply in all respects with all applicable Environmental Laws, except for non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for its respective ordinary course operations, and each Loan Party is in compliance with all material terms and conditions thereof, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Neither Borrower, any of its Subsidiaries nor any of their respective properties or operations is subject to any outstanding written order from or agreement with any federal, state, or local Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance. There are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of any Loan Party that would reasonably be expected to result in a Material Adverse Effect. No Loan Party has underground storage tanks.

5.16 Insurance.

Loan Parties and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate, as applicable. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth on Schedule 5.16.

5.17 Information.

All written information heretofore or contemporaneously herewith furnished in writing by Borrower to Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, is, and all written information hereafter furnished by or on behalf of Borrower to Agent or any Lender pursuant hereto or in connection herewith, taken as a whole, will be true and accurate in every material respect on the date as of which such information, taken as a whole, is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect in light of the circumstances under which made (it being recognized by Agent and Lenders that any projections and forecasts provided by Borrower are based on good faith estimates and assumptions believed by Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

5.18 Intellectual Property; Products and Services.

(a) Schedule 5.18(a) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all of Loan Parties' Registered Intellectual Property. Each Loan Party owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of the business of such Loan Party, without any known infringement upon the intellectual property rights of others, except as otherwise set forth on Schedule 5.18(a) hereto.

(b) Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all Products, Services, and all Required Permits in relation thereto, and Borrower has delivered to Agent a copy of all Required Permits as of the date hereof.

(c) With respect to any Product or Service being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or the applicable, authorized third parties have received), and such Product or Service is the subject of, all Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of such Product or Service by or on behalf of Loan Parties as currently conducted. No Loan Party has received any notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than a normal routine scheduled inspection) of any Loan Party's (*x*) manufacturing facilities, laboratory facilities, the processes for such Product, or any related sales or marketing activities and/or the Required Permits related to such Product, and (*y*) laboratory facilities, the processes for such Services, or any related sales or marketing activities and/or the Required Permits related to such Services. There are no material deficiencies or violations of applicable laws in relation to the manufacturing, processes, sales, marketing, or delivery of such Product or Services and/or the Required Permits related to such Product or Services, no Required Permit has been revoked or withdrawn, nor, to the best of Borrower's knowledge, has any such Governmental Authority issued any order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of such Product or Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable.

(d) Except as set forth on Schedule 5.18(b), (A) there have been no adverse clinical trial results in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product, and (B) there have been no product recalls or voluntary product withdrawals from any market in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product.

(e) No Loan Party has experienced any significant failures in its manufacturing of any Product which caused any reduction in Products sold.

5.19 Restrictive Provisions.

No Loan Party is a party to any agreement or contract or subject to any restriction contained in its operative documents which would reasonably be expected to have a Material Adverse Effect.

5.20 Labor Matters.

No Loan Party is subject to any labor or collective bargaining agreement. There are no known existing or threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Loan Party are not in violation in any material respect of the Fair Labor Standards Act or any other applicable law, rule or regulation dealing with such matters. Each Loan Party has fully and timely made any and all social benefits and pension contributions and payments required to be made by such Loan Party according to any applicable law or agreement.

5.21 Material Contracts.

The agreements set forth on Schedule 5.21 constitute all material contracts required to be filed by Borrower with the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended (collectively, the "Material Contracts"). Schedule 5.21 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22 Compliance with Laws; Health Care Laws.

(a) Laws Generally. Each Loan Party is in material compliance with, and is conducting and has conducted its business and operations in material compliance with the requirements of all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b) Health Care Laws. Without limiting the generality of clause (a) above:

(i) No Loan Party is in violation of any of the Health Care Laws, except for any such violation which would not reasonably be expected (either individually and taken as a whole with any other violations) to have a Material Adverse Effect.

(ii) Each Loan Party (either directly or through one or more authorized third parties) has (i) all licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "Authorization") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

(iii) Each Loan Party has received and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent required by applicable law or regulation (including any foreign law or equivalent regulation), except where the failure to be so accredited and in good standing without limitation would not reasonably be expected to have a Material Adverse Effect.

(iv) Except where any of the following would not reasonably be expected to have a Material Adverse Effect, no Loan Party has been, or has been threatened to be, (i) excluded from U.S. health care programs pursuant to 42 U.S.C. §1320(a)7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state or local laws or regulations.

(v) No Loan Party has received any written notice from the FDA, CMS, or any other Governmental Authority with respect to, nor to Borrower's best knowledge is there, any actual or threatened investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by the FDA, CMS, or any other Governmental Authority against any Loan Party regarding any violation of applicable law, except for such investigations, inquiries, or administrative or judicial actions, hearings, or enforcement proceedings which, individually and in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts.

Except as set forth on Schedule 7.1, no Loan Party (a) has any outstanding Debt, except Debt under the Loan Documents, or (b) owns or holds any equity or long-term debt investments in, or has any outstanding advances to or any outstanding guarantees for the obligations of, or any outstanding borrowings from, any other Person.

5.24 Affiliated Agreements.

Except as set forth on Schedule 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, (i) there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand, and (ii) to Borrower's knowledge, none of the foregoing Persons are directly or indirectly, indebted to or have any direct or indirect ownership or voting interest in, any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own equity interests in (but not exceeding two percent (2%) of the outstanding equity interests of) any publicly traded company that may compete with Loan Parties).

5.25 Names; Locations of Offices, Records and Collateral; Deposit Accounts.

No Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business conducted and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains, and since its formation has maintained, respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Agent and Lenders, and (iii) other locations disclosed to Agent from time to time in writing). Schedule 7.14 lists all of Loan Parties' Deposit Accounts as of the Closing Date. All of the tangible Collateral is located exclusively within the United States.

5.26 Non-Subordination.

The payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27 Broker's or Finder's Commissions.

Except as set forth in Schedule 5.27, no broker's, finder's or placement fee or commission will be payable to any broker or agent engaged by any Loan Party or any of its officers, directors or agents with respect to the Loan or the transactions contemplated by this Agreement except for fees payable to Agent and Lenders. Borrower agrees to indemnify Agent and each Lender and hold each harmless from and against any claim, demand or liability for broker's, finder's or placement fees or similar commissions, whether or not payable by Borrower, alleged to have been incurred in connection with such transactions, other than any broker's or finder's fees payable to Persons engaged by Agent and/or Lenders.

5.28 Anti-Terrorism; OFAC.

(a) No Loan Party nor any Person controlling or controlled by a Loan Party, nor, to Borrower's knowledge, any Person having a beneficial interest in a Loan Party, nor any Person for whom a Loan Party is acting as agent or nominee in connection with this transaction (1) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner that violates of Section 2 of such executive order, or (3) is a Person on the list of Specially Designated Nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b) No part of the proceeds of the Loan will be used, directly or 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.

5.29 Security Interest.

Except for the anti-assignment provisions included in the agreements set forth on Schedule 5.29, hereto, each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens) security interest and Lien on the Collateral pursuant to this Agreement and the other Loan Documents, as applicable, subject to the following sentence. Upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary financing statements and/or appropriate filings and/or delivery of the necessary certificates evidencing any equity interest, control and/or possession, as applicable, without any further action, Agent will have a good, valid and first priority (subject to Permitted Liens) perfected Lien and security interest in the Collateral, for the benefit of Agent and Lenders. Borrower is not party to any agreement, document or instrument that conflicts with this Section 5.29.

5.30 Survival.

Borrower hereby makes the representations and warranties contained herein with the knowledge and intention that Agent and Lenders are relying and will rely thereon. All such representations and warranties will survive the execution and delivery of this Agreement, the closing and the making of the Loan.

Section 6 Affirmative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, it will:

6.1 Information.

Furnish to Agent (which shall furnish to each Lender):

6.1.1 Annual Report.

Promptly when available and in any event within one hundred twenty (120) days after the close of each Fiscal Year: (a) a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a consolidated balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants) by independent auditors of recognized standing selected by Borrower and reasonably acceptable to Agent, and (ii) a comparison with the previous Fiscal Year; and (b) upon Agent's reasonable request, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flows for Borrower and its Subsidiaries for such Fiscal Year, together with a comparison of actual results for such Fiscal Year with the budget for such Fiscal Year, each certified by the chief financial officer or another executive officer of Borrower.

6.1.2 Interim Reports.

(a) Promptly when available and in any event within forty-five (45) days after the end of each Fiscal Quarter, unaudited consolidated balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Quarter, together with consolidated statements of earnings and cash flows for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by the chief financial officer or other executive officer of Borrower.

(b) Together with each such quarterly report to be delivered pursuant to clause (a) above, Borrower shall provide to Agent (i) a written statement of Borrower's management setting forth a summary discussion of Borrower's financial condition, changes in financial condition and results of operations, and (ii) updated Schedules to this Agreement, as applicable, setting forth any changes to the disclosures set forth in such schedules as most recently provided to Agent.

(c) Promptly when available, copies of all monthly or quarterly sales, production or similar reports prepared by Borrower or otherwise utilized by management of Borrower in the normal course of business.

6.1.3 Monthly Review Meeting.

Borrower and any other Loan Parties as requested by Agent shall be available in person or via teleconference as and when requested by Agent and no less frequent than monthly for a review meeting regarding the status of Borrower, the Collateral and performance of the same.

6.1.4 Revenue-Based Payment Reconciliation.

Upon Agent's request Borrower shall furnish to Agent, a report, in form acceptable to Agent, reconciling the Net Sales, Royalties, and all other revenue reported by Borrower to Agent during any reporting period to the Aggregate Revenue reported by Borrower hereunder for such period and the amount of Revenue-Based Payment(s) made by Borrower in connection with such period(s).

6.1.5 Compliance Certificate.

Contemporaneously with the furnishing of a copy of each annual audit report pursuant to Section 6.1.1 and each set of quarterly statements pursuant to Section 6.1.2, a duly completed Compliance Certificate, with appropriate insertions, dated the date of delivery and corresponding to such annual report or such quarterly statements, and signed by the chief financial officer (or other executive officer) of Borrower, containing computations, if applicable, showing compliance with Section 7.13 and a statement to the effect that such officer has not become aware of any Event of Default or Default that exists or, if there is any such event, describing it and the steps, if any, being taken to cure it.

6.1.6 Reports to Governmental Authorities and Shareholders.

Promptly upon the filing or sending thereof, copies of (a) all regular, periodic or special reports of each Loan Party filed with any Governmental Authority, (b) all registration statements (or such equivalent documents) of each Loan Party filed with any Governmental Authority and (c) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally.

6.1.7 Notice of Default; Litigation.

Promptly upon becoming aware of any of the following, written notice describing the same and the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

(a) the occurrence of an Event of Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in any case would reasonably be expected to have a Material Adverse Effect;

(c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent;

(d) any cancellation or material adverse change in any insurance maintained by Borrower or any other Loan Party;

(e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule or regulation) which could reasonably be expected to have a Material Adverse Effect; or

(f) to the extent that it would reasonably be expected to result in a Material Adverse Effect (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with CLIA or any other applicable Health Care Law, (iv) the occurrence of any violation of any Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that could reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer, employee or agent of Borrower or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

6.1.8 Management Report.

Within five (5) Business Days after receipt thereof, copies of all detailed financial and management reports submitted to Borrower or any other Loan Party by independent auditors in connection with each annual or interim audit made by such auditors of the books of Borrower or any other Loan Party.

6.1.9 Projections.

As soon as practicable, and in any event not later than thirty (30) days after the commencement of each Fiscal Year, financial projections on a quarterly basis of revenues and EBITDA for Borrower and the Subsidiaries for such Fiscal Year prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a chief financial officer (or other executive officer) of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections and (c) such projections have been prepared in accordance with such assumptions.

6.1.10 Updated Schedules to Guarantee and Collateral Agreement.

Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Guarantee and Collateral Agreement).

6.1.11 Other Information.

Promptly, from time to time as Agent reasonably requests, Borrower shall deliver or shall cause to be delivered to Agent:

(a) copies of any reports, statements or written materials (other than routine communications (electronic or otherwise) between Borrower or its Affiliates and such entities that are not material in nature) in relation to any Material Contract;

(b) such other information concerning Borrower and any other Loan Party as Agent may reasonably request;

(c) copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority; and

(d) copies of (*x*) any notices or other communications relating to any breach, default, or event of default with respect to any Debt listed on Schedule 7.1 and (*y*) any other modifications or amendments entered into in relation to any Debt listed on Schedule 7.1.

6.2 Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to inspect the properties and operations of Borrower or any other Loan Party; and permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof), and to examine (and, at the expense of Borrower or the applicable Loan Party, photocopy extracts from) any of its books or other records; and permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, to perform appraisals of the equipment of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral. Notwithstanding the forgoing, prior to the occurrence and continuance of an Event of Default, Agent and Lenders shall conduct no more than one (1) such inspection, examination and or audit described in this Section 6.2 during any Fiscal Quarter.

6.3 Conduct of Business; Maintenance of Property; Insurance.

(a) Borrower shall, and shall cause each other Loan Party to, (i) conduct its business in accordance with its current business practices, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted, (iii) collect the Royalties in the ordinary course of business, (iv) maintain all of its Collateral used or useful in its business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral; (vi) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all Intellectual Property and Permits necessary to conduct its business, except in each case where the failure to maintain, comply with or keep in full force and effect could not reasonably be expected to be, have or result in a Material Adverse Effect.

(b) Borrower shall keep, and cause each other Loan Party to keep, all property necessary in the business of Borrower or each other Loan Party in good working order and condition, ordinary wear and tear excepted.

(c) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is (i) customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to CLIA and other applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent in its reasonable discretion), and (ii) otherwise in form, substance, and amounts acceptable to Agent in its reasonable discretion; *provided* that in any event, such insurance shall, unless the Agent otherwise agrees, insure against all risks and liabilities of the type insured against as of the Closing Date and shall have insured amounts no less than, and deductibles no higher than, those amounts provided for as of the Closing Date. Upon request of Agent or any Lender, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy to provide Agent with an endorsement (*x*) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (*y*) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the policy prior to the expiration thereof and (*z*) reasonably acceptable in all other respects to Agent.

(d) Unless Borrower provides Agent with evidence of the continuing insurance coverage required by this Agreement, Agent (upon reasonable advance notice to Borrower) may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Collateral. This insurance shall protect Borrower's and each other Loan Party's interests. The coverage that Agent purchases shall pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the reasonable costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs of the insurance may be added to the principal amount of the Loans owing hereunder.

(e) In addition to the foregoing, Borrower shall maintain during the term of this Agreement, a life insurance policy on the life of each Key Person with a responsible insurance company, in the aggregate amount of $3,000,000 (the "Keyman Life Insurance Policy") and shall provide and shall cause the issuer of the Keyman Life Insurance Policy to provide Agent with copies of each Keyman Life Insurance Policy and any additional documentation, each in form and substance acceptable to Agent in its commercially-reasonable discretion, necessary to grant Agent a perfected assignment of such Keyman Life Insurance Policy.

6.4 Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations, (d) file, or cause to be filed, all federal, state, foreign and other tax returns and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all foreign, federal, state and other taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; *provided* that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP. For purposes of this Section 6.4, “Control” shall mean, when used with respect to any Person, (*x*) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (*y*) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

6.5 Maintenance of Existence.

Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

6.6 Employee Benefit Plans.

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of $100,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law and regulations.

6.7 Environmental Matters.

Except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, if any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply in all material respects with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, Borrower shall, and shall cause each other Loan Party to, comply with each valid federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance.

6.8 Further Assurances.

Take, and cause each other Loan Party to take, such actions as are necessary or as Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower and each Subsidiary of Borrower (as well as all equity interests of each Subsidiary of Borrower) and guaranteed by all of the Subsidiaries of Borrower (including, promptly upon the acquisition or creation thereof, any Subsidiary of Borrower acquired or created after the Closing Date), in each case including (a) the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time.

6.9 Compliance with Health Care Laws.

(a) Without limiting or qualifying Section 6.4 or any other provision of this Agreement, Borrower will comply, and will cause each other Loan Party and each Subsidiary of Borrower to comply, in all material respects with all applicable Health Care Laws relating to the operation of such Person's business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower will, and will cause each other Loan Party and each Subsidiary to:

(i) Keep in full force and effect all Authorizations required to operate such Person's business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that could reasonably be expected to have a Material Adverse Effect, (w) copies of all material reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's business, (x) copies of all material establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority, (y) copies of all material warnings and material untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority relating to or arising out of the conduct applicable to the business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, DEA, CMS, or any other Governmental Authority.

(iii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that would reasonably be expected to have a Material Adverse Effect, (in such form as may be reasonably required by Agent) copies of all non-privileged, reports, correspondence, pleadings and other communications relating to any matter that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of any Loan Party or Subsidiary; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv) Promptly furnish or cause to be furnished to the Agent notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against any Loan Party or any of its Subsidiaries.

(v) Promptly furnish or cause to be furnished to the Agent notice of all material allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of any Loan Party or any of its Subsidiaries in relation to the provision of clinical research or related services.

Notwithstanding anything to the contrary in any Loan Document, no Loan Party or any of its Subsidiaries shall be required to furnish to Agent or any Lender patient-related or other information, the disclosure of which to Agent or such Lender is prohibited by any applicable law.

6.10 Cure of Violations.

If there shall occur any breach of Section 6.9, Borrower shall take such commercially reasonable action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Health Care Laws, and shall thereafter diligently pursue the same.

6.11 Corporate Compliance Program.

Maintain, and will cause each other Loan Party to maintain on its behalf, reasonable procedures to ensure that its employees and agents (including such Loan Party's sales force) complies with applicable laws and regulations (including, for the avoidance of doubt, any Health Care Laws applicable to such Loan Party). Upon request by Agent, Borrower shall provide Agent with information regarding such procedures.

6.12 Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of payment practices) all of its material obligations and liabilities, except when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied.

6.13 Right of First Refusal.

If Borrower shall have obtained a bona fide, third-party offer for secured financing prior to the earlier of (i) the prepayment in full of the Term Loan or (ii) the Term Loan Maturity Date that Borrower intends on accepting and/or consummating (each being a "Third-Party Financing Offer"), Borrower shall, prior to accepting or consummating such Third-Party Financing Offer, promptly inform Agent in writing (which may be by email) of the existence of such Third-Party Financing Offer and which notice shall outline the material economic terms and conditions of such Third-Party Financing Offer ("Third-Party Financing Offer Notice"). Agent shall have a right of first refusal to match the Third-Party Financing Offer's material terms with respect to any financing or refinancing, (in each case, the "Material Terms").

After the receipt of such Third-Party Financing Offer Notice, Agent shall have fourteen days (14) days to agree to match the Material Terms of such Third-Party Financing Offer on terms which shall be the same or better (as determined by the Borrower in its reasonable discretion) than the Material Terms of such Third-Party Financing Offer (the "Acceptance"); provided that in the event the Agent declines to exercise its right under a Third-Party Financing Offer, Agent shall promptly notify Borrower of its decision in writing (which may be by email).

Upon Borrower's receipt of the Acceptance, Agent and one or more additional lenders selected by Agent, on the one hand, and Borrower, on the other hand, shall, in good faith enter into an agreement for such financing or refinancing transaction on the Material Terms set forth in such Acceptance (subject to the satisfaction of appropriate conditions in respect of due diligence, documentation and other customary and commercial conditions precedent, the "Definitive Documentation"). If Agent shall have declined to exercise its right under such Third-Party Financing Offer or, after good faith efforts, Borrower, Agent and such other lender(s) are unable to enter into or consummate the Definitive Documentation ("End Date"), Borrower or such Affiliates shall be free to consummate such Third-Party Financing Offer within one hundred eighty (180) days of the End Date on terms substantially similar to the terms of such Third Party Financing Offer. If such Loan Party shall have failed to so consummate such transaction within said one hundred eighty (180) days or if the Material Terms of such transaction are materially modified from the description of such terms in the Third-Party Financing Offer Notice, then a new right of first refusal for the benefit of Agent with respect to such transaction shall immediately arise.

Section 7 Negative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, in its sole discretion, it will:

7.1 Debt.

Not, and not permit any other Loan Party to, create, incur, assume or suffer to exist any Debt, except:

(a) Obligations under this Agreement and the other Loan Documents;

(b) Subordinated Debt;

(c) Debt secured by Liens permitted by Section 7.2(b), Section 7.2(d) or Section 7.2(o) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(d) at any time outstanding shall not exceed $500,000;

(d) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(e) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party incurred in the ordinary course of business, or (iii) representing customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(f) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;

(g) Debt incurred in connection with surety bonds, performance bonds or letters of credit for worker's compensation, unemployment compensation and other types of social security and otherwise in the ordinary course of business or referred to in Section 7.2(e);

(h) Debt described on Schedule 7.1 as of the Closing Date, and any extension or renewal thereof so long (i) as the principal amount thereof is not increased, (ii) as the terms and conditions of such extension, renewal or refinancing are substantially identical to the original Debt, (iii) as to such extension or renewal, no collateral or other form of security is granted by Borrower in connection therewith; and

(i) unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Loan Parties in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding $100,000.

7.2 Liens.

Not, and not permit any other Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement has occurred;

(b) Liens arising in the ordinary course of business (including without limitation (i) Liens of carriers, warehousemen, mechanics, landlords and materialmen and other similar Liens imposed by law and (ii) Liens incurred in connection with worker's compensation, unemployment compensation and other types of social security or in connection with surety bonds, bids, tenders, performance bonds, trade contracts not for borrowed money, licenses, statutory obligations and similar obligations) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement of which is effectively stayed;

(c) Liens described on Schedule 7.2 as of the Closing Date (other than Liens being released at the closing under this Agreement) and the replacement, extension or renewal of any Lien permitted by this clause (c) upon or in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);

(d) (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased), (ii) Liens on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring or improving such property; *provided* that any such Lien attaches to such property within ninety (90) days of the acquisition or improvement thereof and attaches solely to the property so acquired or improved, and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);

(e) Liens relating to litigation bonds and attachments, appeal bonds, judgments and other similar Liens arising in connection with any judgment or award that is not an Event of Default hereunder;

(f) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower or any Subsidiary;

(g) Liens arising under the Loan Documents;

(h) any interest or title of a licensor, sublicensor, lessor or sublessor under any license, lease, sublicense or sublease agreement entered into in the normal course of business, only to the extent limited to the item licensed or leased;

(i) (i) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) customary set off rights of deposit banks with respect to deposit accounts maintained at such deposit banks or which are contained in standard agreements for the opening of an account with a bank;

(j) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by a Loan Party in the ordinary course of business;

(k) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(l) Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(m) Liens to secure obligations of a Loan Party to another Loan Party; and

(n) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business.

7.3 Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof.

7.4 Mergers; Consolidations; Asset Sales.

(a) Not be a party to any amalgamation or any other form of Division, merger or consolidation, unless agreed to by Agent in its commercially reasonable discretion, nor permit any other Loan Party to be a party to any Division, amalgamation or any other form of merger or consolidation, unless agreed to by Agent in its reasonable discretion. Notwithstanding the foregoing, in the event that Agent withholds its approval under this Section 7.4 for any reason, Borrower may prepay all of its obligations under this Agreement without the payment of any prepayment penalty or premium described in Section 2.8 of this Agreement and proceed with such transaction.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests, except for (i) sales of Inventory in the ordinary course of business for at least fair market value, (ii) transfers, destruction or other disposition of obsolete or worn-out assets in the ordinary course of business and (iii) any other sales and dispositions of assets (excluding (A) any Equity Interests of Borrower or any Subsidiary or (B) sales of Inventory described in clause (i) above) for at least fair market value (as determined by the Board of Directors of Borrower) so long as the net book value of all assets sold or otherwise disposed of in any Fiscal Year does not exceed $250,000 with respect to sales and dispositions made pursuant to this clause (iii), (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, "eminent domain" or similar proceeding, (xiii) sales and dispositions among Subsidiaries of Borrower, and (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party's business, (ii) on an arms-length basis and (iii) prior to the occurrence of an Event of Default.

7.5 Modification of Organizational Documents.

Not permit the charter, by-laws or other organizational documents of Borrower or any other Loan Party to be amended or modified in any way which could reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower's certificate of incorporation to increase Borrower's authorized capital stock shall not be deemed to adversely affect the interests of Agent or any Lender.

7.6 Use of Proceeds.

Use the proceeds of the Loans solely to refinance the Prior Debt, if any, and otherwise for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby and for other general business purposes of Borrower and its Subsidiaries, and not use any proceeds of any Loan or permit any proceeds of any Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock.

7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties and (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7.

7.8 Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any other Loan Party to (i) pay dividends or make other distributions to Borrower or any other Subsidiary, or pay any Debt owed to Borrower or any other Subsidiary, (ii) make loans or advances to Borrower or any other Loan Party or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, and (D) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

7.9 Business Activities.

Not, and not permit any other Loan Party to, engage in any line of business other than the businesses engaged in on the Closing Date and businesses reasonably related thereto. Not, and not permit any other Loan Party to, issue any Equity Interest other than (a) Equity Interests of Borrower that do not require any cash dividends or other cash distributions to be made prior to the Obligations being Paid in Full, (b) any issuance by a Subsidiary to Borrower or another Subsidiary in accordance with Section 7.4 or Section 7.10, or (c) any issuance of directors' qualifying shares as required by applicable law.

7.10 Investments.

Not, and not permit any other Loan Party to, make or permit to exist any Investment in any other Person, except the following:

(a) The creation of any Wholly-Owned Subsidiary and contributions by Borrower to the capital of any Wholly-Owned Subsidiary of Borrower, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.8;

(b) Cash Equivalent Investments;

(c) bank deposits in the ordinary course of business;

(d) Investments listed on Schedule 7.10 as of the Closing Date, together with any roll-over or reinvestment of such Investment(s);

(e) any purchase or other acquisition by Borrower or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;

(f) transactions among Loan Parties permitted by Section 7.4;

(g) Hedging Obligations permitted under Section 7.1(d);

(h) advances given to employees and directors in existence as of the Closing Date and as listed on Schedule 7.10, which amounts shall not be increased without Agent's prior written consent in its commercially-reasonable discretion;

(i) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;

(j) Investments consisting of the non-cash portion of the consideration received in respect of Dispositions permitted hereunder;

(k) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or expropriation proceeds in accordance with the Loan Documents; and

(l) Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof.

7.11 Restriction of Amendments to Certain Documents.

Not, nor permit any Loan Party to, amend or otherwise modify in any material manner, or waive any rights under, any provisions of any of the Material Contracts (or any replacements thereof) set forth on Schedule 7.11 hereto (as such schedule may be updated by Agent from time to time to include any material contracts, licenses, agreements or similar arrangements to those described on such Schedule as of the Closing Date that are entered into by a Loan Party from time to time after the Closing Date).

7.12 Fiscal Year.

Not change its Fiscal Year.

7.13 Financial Covenants

7.13.1 Minimum Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets to be less than $1,000,000 as of any date of determination.

7.13.2 Minimum Aggregate Revenue.

Not permit the Aggregate Revenue for the applicable period set forth in the table below to be less than the applicable amount set forth in the table below for such period:

Minimum Aggregate Revenue as of the end of:	
Twelve (12) month period ending on September 30, 2024	$27,020,000
Twelve (12) month period ending on December 31, 2024	$28,498,000
Twelve (12) month period ending on March 31, 2025	$30,196,000
Twelve (12) month period ending on June 30, 2025	$32,325,000
Twelve (12) month period ending on September 30, 2025	$35,495,000
Twelve (12) month period ending on December 31, 2025 and the last day of each Fiscal Quarter thereafter	$39,607,000

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. Borrower or such other applicable Loan Party and the bank or other financial institution at which the account is to be opened after the Closing Date shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent.

7.15 Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) such Subsidiary shall have assumed and joined each Loan Document as a Loan Party pursuant to documentation acceptable to Agent in its commercially-resaonable discretion and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all representations and warranties under the Loan Documents (except to the extent such representations and warranties specifically relate to a prior date only).

7.16 Regulatory Matters.

To the extent that any of the following would reasonably be expected to result in a Material Adverse Effect, not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of CLIA or that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) conduct any clinical studies in the United States or sponsor the conduct of any clinical research in the United States, (iii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iv) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of the FD&C Act or that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or (v) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names.

Borrower shall not, nor shall it permit any Loan Party to, (a) change its jurisdiction of organization or change its corporate name without thirty (30) calendar days prior written notice to Agent, (b) amend, alter, suspend, terminate or make provisional in any material way, any Permit, the suspension, amendment, alteration or termination of which could reasonably be expected to be, have or result in a Material Adverse Effect without the prior written consent of Agent, which consent shall not be unreasonably withheld, (c) wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, (d) amend, modify, restate or change any insurance policy in a manner adverse to Agent or Lenders or otherwise allow its aggregate products liability insurance coverage to be less than an amount that is commercially reasonable and consistent with customary industry practices, (e) engage, directly or indirectly, in any business other than the business it is engaged in on the Closing Date and/or sell all or any material portion of its assets without Agent's prior written approval in its commercially-reasonable discretion, (f) change its federal tax employer identification number or similar tax identification number under the relevant jurisdiction or establish new or additional trade names without providing not less than thirty (30) days advance written notice to Agent, or (g) revoke, alter or amend any Tax Information Authorization (on IRS Form 8821 or otherwise) or other similar authorization mandated by the relevant Governmental Authority given to any Lender.

7.18 Truth of Statements.

Borrower shall not knowingly furnish to Agent or any Lender any certificate or other document that contains any untrue statement of a material fact or that omits to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

Section 8 Events of Default; Remedies.

8.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1 Non-Payment of Credit.

(a) Default in the payment when due of all outstanding Obligations on the Termination Date; (b) default in the payment of any Revenue-Based Payment on or before the applicable Payment Date; or (c) without duplication of clause (b) hereof, default, and continuance thereof for five (5) Business Days, in the payment when due of any interest, fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2 Default Under Other Debt.

Any default shall occur under the terms applicable to any Debt of any Loan Party (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding $250,000.

8.1.3 Bankruptcy; Insolvency.

(a) Any Loan Party shall (i) be unable to pay its debts generally as they become due, (ii) file a petition under any insolvency statute, (iii) make a general assignment for the benefit of its creditors, (iv) commence a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (v) make an application or commence a proceeding seeking reorganization or liquidation or similar relief under any Debtor Relief Law or any other applicable law; or

(b) (i) a court of competent jurisdiction shall (A) enter an order, judgment or decree appointing a custodian, receiver, trustee, liquidator or conservator of any Loan Party or the whole or any substantial part of any of Loan Party's properties, which shall continue unstayed and in effect for a period of ninety (90) calendar days, (B) approve a petition or claim filed against any Loan Party seeking reorganization, liquidation, appointment of a receiver, interim receiver, liquidator, conservator, trustee or special manager or similar relief under any Debtor Relief Law or any other applicable law, which is not dismissed within ninety (90) calendar days or, (C) under the provisions of any Debtor Relief Law or other applicable law or statute, assume custody or control of any Loan Party or of the whole or any substantial part of any of Loan Party's properties, which is not irrevocably relinquished within ninety (90) calendar days, or (ii) there is commenced against any Loan Party any proceeding or petition seeking reorganization, liquidation or similar relief under any Debtor Relief Law or any other applicable law or statute, which (A) is not unconditionally dismissed within ninety (90) calendar days after the date of commencement, or (B) is with respect to which Borrower takes any action to indicate its approval of or consent.

8.1.4 Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of
$250,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of $250,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $250,000.

8.1.7 Judgments.

Final judgments which exceed an aggregate of $250,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty (30) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

(a) Any Loan Document shall cease to be in full force and effect otherwise in accordance with its express terms that results in a material diminution of the rights and remedies afforded to Agent and/or Lenders or any other secured parties thereunder; (b) any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Loan Document; or (c) any Lien created pursuant to any Loan Document ceases to constitute a valid first priority perfected Lien (subject to Permitted Liens) on any material portion of the Collateral in accordance with the terms thereof, or Agent ceases to have a valid perfected first priority security interest (subject to Permitted Liens) in any material portion of the Collateral pledged to Agent, for the benefit of Agent and Lenders, pursuant to the Collateral Documents.

8.1.9 Invalidity of Subordination Provisions.

Any subordination provision in any intercreditor agreement shall cease to be in full force and effect, or any Loan Party shall contest in any manner the validity, binding nature or enforceability of any such provision.

8.1.10 Change of Control.

A Change of Control not otherwise permitted pursuant to Section 7.4 above shall occur that does not result in the payment in full of all Obligations hereunder in accordance with Section 2.8.3.

8.1.11 Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters.

(a) The institution of any proceeding by FDA, CMS, or any other Governmental Authority to order the withdrawal of any Product or Product category or Service or Service category from the market or to enjoin Borrower or any of its Affiliates from manufacturing, marketing, selling, distributing, or otherwise providing any Product or Product category or Service or Service category that could reasonably be expected to have a Material Adverse Effect, (b) the institution of any action or proceeding by DEA, FDA, CMS, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by Borrower or any of its Affiliates or any of their representatives, which, in each case, could reasonably be expected to have a Material Adverse Effect, (c) the commencement of any enforcement action against Borrower or any of its Affiliates by DEA, FDA, CMS, or any other Governmental Authority that could reasonably be expected to have a Material Adverse Effect, (d) the recall of any Products or Service from the market, the voluntary withdrawal of any Products or Service from the market, or actions to discontinue the sale of any Products or Service that could reasonably be expected to have a Material Adverse Effect, (e) the occurrence of adverse test, audit, or inspection results in connection with a Product or Service which could reasonably be expected to have a Material Adverse Effect, or (f) the occurrence of any event described in clauses (a) through (e) above that would otherwise cause Borrower to be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

8.1.12 Material Adverse Effect.

Any Material Adverse Effect shall occur that is not otherwise provided for in this Section 8.1.

8.2 Remedies.

(a) If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other Obligations (including without limitation the Exit Fee and any amounts due pursuant to Section 2.8.2 hereof, payable with respect thereto) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of an Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Agent and Lenders, or Required Lenders at any place reasonably designated by Required Lenders in their sole discretion and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

(c) The enumeration of any rights and remedies in any Loan Document is not intended to be exhaustive, and all rights and remedies of Agent and Lenders described in any Loan Document are cumulative and are not alternative to or exclusive of any other rights or remedies which Agent and Lenders otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(b) and/or Section 2.10, as applicable, and any Protective Advances shall bear interest at the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment; Authorization.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

9.2 Delegation of Duties.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3 Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender.

9.5 Notice of Default.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default." Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders. Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; *provided* that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent 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 Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7 Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand Agent and its Affiliates, directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), based on such Lender's Pro Rata Term Loan Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs, except to the extent any thereof result from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 9.7 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of Agent.

9.8 Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of Default exists) Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent for the benefit of Agent and Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10 Collateral and Guarantee Matters.

Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof to release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1). Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 9.10.

Agent shall release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full, (ii) in respect of property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement) or (iii) subject to Section 10.1, if directed to do so in writing by Required Lenders.

In furtherance of the foregoing, Agent agrees to execute and deliver to Borrower, at Borrower's expense, such termination and release documentation as Borrower may reasonably request to evidence a Lien release that occurs pursuant to terms of this Section 9.10.

9.11 Intercreditor Agreements.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into one or more intercreditor agreements in relation to any other Debt of Borrower entered into in accordance with this Agreement or as otherwise approved by Required Lenders, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 9.11). Each Lender further agrees to be bound by the terms and conditions of any such intercreditor agreement. Each Lender hereby authorizes Agent to issue blockages notices in connection with any such Debt of Borrower and such intercreditor agreement, or any replacement intercreditor agreement, in its discretion or, at the direction of Required Lenders.

9.12 Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of set-off) without first obtaining the prior written consent of Agent and Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

Section 10 Miscellaneous.

10.1 Waiver; Amendments.

(a) Except as otherwise expressly provided in this Agreement, no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party), by Lenders having aggregate Pro Rata Term Loan Shares of not less than the aggregate Pro Rata Term Loan Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided*, *however*, that:

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly affected by such increase), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)) or interest on the Loans or any fees or other amounts payable hereunder or under the other Loan Documents, or (C) reduce the principal amount of any Loan, the amount or rate of interest thereon (*provided* that Required Lenders may rescind an imposition of default interest pursuant to Section 2.6.1), or any fees or other amounts payable hereunder or under the other Loan Documents; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Borrower (with respect to Loan Documents to which Borrower is a party), do any of the following: (A) release any material guaranty under the Guarantee and Collateral Agreement or release all or substantially all of the Collateral granted under the Collateral Documents, except as otherwise specifically provided in this Agreement or the other Loan Documents, (B) change the definition of Required Lenders, (C) change any provision of this Section 10.1, (D) amend the provisions of Section 2.10.2 or Section 2.10.4, or (E) reduce the aggregate Pro Rata Term Loan Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by Agent, in addition to Borrower and Required Lenders (or all Lenders directly affected thereby or all of the Lenders, as the case may be, in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including without limitation under the provisions of Section 9), under this Agreement or any other Loan Document.

(c) No delay on the part of Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

10.2 Notices.

All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at its address shown on Annex II or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by mail, first class postage prepaid; and notices sent by hand delivery, registered or certified mail, or overnight courier service shall be deemed to have been given when received. Borrower, Agent and Lenders each hereby acknowledge that, from time to time, Agent, Lenders and Borrower may deliver information and notices using electronic mail.

10.3 Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied. The explicit qualification of terms or computations by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. Notwithstanding any other provision contained herein, 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 any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Debt or other liabilities of any Loan Party or any Subsidiary at "fair value", as defined therein.

10.4 Costs; Expenses.

Borrower agrees to pay on demand the reasonable, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, syndication and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith; provided Borrower's reimbursement obligations for Agent's costs and expenses incurred prior to the Closing Date shall not exceed $125,000, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5 Indemnification by Borrower.

In consideration of the execution and delivery of this Agreement by Agent and Lenders and the agreement to extend the Commitments provided hereunder, Borrower hereby agrees to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any Loan Party or any of their respective officers, directors or agents, including, without limitation, (a) any tender offer, merger, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by Borrower or any other Loan Party, (c) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Loan Party or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Loan Party or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances, (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result solely from the applicable Lender Party's own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction in a non-appealable judgment, or (f) such Person's general operation of its business including all product liability out of or in connection with such Person's or any of its Affiliates or licensees manufacture use or sale of a Product or the provision of a Service. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

10.6 Marshaling; Payments Set Aside.

Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Agent or any Lender, or Agent or any Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or any Lender in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the fullest extent permitted by applicable law, to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (b) each Lender severally agrees to pay to Agent upon demand its ratable share of the total amount so recovered from or repaid by Agent to the extent paid to such Lender.

10.7 Nonliability of Lenders.

The relationship between Borrower on the one hand and Lenders and Agent on the other hand shall be solely that of borrower and lender. Neither Agent nor any Lender shall have any fiduciary responsibility to Borrower. Neither Agent nor any Lender undertakes any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. To the fullest extent permitted under applicable law, execution of this Agreement by Borrower constitutes a full, complete and irrevocable release of any and all claims which Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any liability with respect to, and Borrower hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities. Nothing set forth in this Agreement shall be deemed a waiver by Borrower in relation to Agent's and Lenders' general duty of good faith and fair dealing to Loan Parties.

10.8 Assignments.

10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an "Assignee") all or any portion of such Lender's Loans and Commitments, with the prior written consent of Agent, and, so long as no Default or Event of Default has occurred and is continuing, Borrower (which consents shall not be unreasonably withheld or delayed), provided, however, that no such consent(s) shall be required:

(i) from Borrower for an assignment by a Lender (i) to another Lender or an Affiliate of a Lender or an Approved Fund of a Lender or (ii) to any finance company, insurance company or other financial institution that invests in commercial loans similar to the financing transaction(s) contemplated in this Agreement in the ordinary course of its business, but, in each case, such Lender will give written notice to Borrower of any such assignment;

(ii) from Agent for an assignment by a Lender to an Affiliate of a Lender or an Approved Fund of a Lender;

(iii) from Borrower or Agent for an assignment by SWK Funding LLC, as a Lender, to any Person for which SWK Advisors LLC acts as an investment advisor (or any similar type of representation or agency) pursuant to a written agreement, but SWK Funding LLC will give written notice to Borrower of any such assignment;

(iv) from Borrower or Agent for an assignment by a Lender of its Loans and its Note as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder); or

(v) from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "Assigned Rights"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof, the term "Permitted Assignee" shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person). Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

(b) From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's Pro Rata Term Loan Share (and, as applicable, a Note in the principal amount of the Pro Rata Term Loan Share retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower any prior Note held by it.

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Commitments of, and principal amount of the Loans owing to, such Lender pursuant to the terms hereof. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(d) Notwithstanding the foregoing provisions of this Section 10.8.1 or any other provision of this Agreement, any Lender may at any time assign all or any portion of its Loans and its Note (i) as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder) and (ii) to (*w*) an Affiliate of such Lender which is at least fifty percent (50%) owned (directly or indirectly) by such Lender or by its direct or indirect parent company, (*x*) its direct or indirect parent company, (*y*) to one or more other Lenders or (*z*) to an Approved Fund.

10.9 Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and *provided*, *further*, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

10.10 Confidentiality.

Borrower, Agent and each Lender agree to use commercially reasonable efforts (equivalent to the efforts Borrower, Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, except that Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (*provided* that such Persons have been informed of the covenants contained in this Section 10.10); (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of Agent or any Lender; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information, promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure *provided*, *however*, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11 Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.12 Nature of Remedies.

All Obligations of Borrower and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.13 Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in ".pdf" format through electronic mail of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including ".pdf"), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

10.14 Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.15 Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

10.16 Successors; Assigns.

This Agreement shall be binding upon Borrower, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent and each Lender.

10.17 Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

10.18 Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT’S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.19 Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20 Patriot Act.

Each Lender that is subject to the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), and Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and Agent are required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

10.21 Independent Nature of Relationship.

Nothing herein contained shall constitute any Loan Party and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 10.21 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. No Loan Party, Lender, nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Loan Parties and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of any Product or the provision of any Service.

[*Remainder of page intentionally blank; signature pages follow*.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

BORROWER:

[Signature Block Removed]

[Signature Page to Credit Agreement]

AGENT AND LENDERS:

[Signature Block Removed]

Exhibit 10.2

Certain information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential

SUPPLY AND DISTRIBUTION AGREEMENT

- by and between -

KNIGHT THERAPEUTICS EUROPE S.A.

- and -

ETON PHARMACEUTICALS, INC.

May 18, 2026

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SUPPLY AND DISTRIBUTION AGREEMENT

This Supply and Distribution Agreement (the "**Agreement**") is made effective as of May 18, 2026 (the "**Effective Date**")

BY AND BETWEEN: **KNIGHT THERAPEUTICS EUROPE S.A.,** a Luxembourg corporation, (hereinafter referred to as "**Knight**")

AND: **ETON PHARMACEUTICALS, INC.**, a United States corporation, (hereinafter referred to as "**Distributor**")

Knight and Distributor are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Distributor is a pharmaceutical company with experience and infrastructure for the commercialization of pharmaceutical products in the Territory (as defined below).

B. Knight has the capability to procure the supply of the pharmaceutical product IMPAVIDO® (miltefosine) for lawful commercialization in the Territory.

C. Knight Therapeutics (USA) Inc. is the valid and exclusive holder of the Marketing Authorization for the Product in the Territory and, subject to the terms and conditions of this Agreement, Knight desires to cause Knight Therapeutics (USA) Inc. to transfer the Marketing Authorization to Distributor to hold as nominee on behalf of Knight.

D. Knight owns or controls the Trademark and, subject to the terms and conditions of this Agreement, Knight desires to grant a license to Distributor to use the Trademark solely in connection with the Commercialization of the Product in the Territory.

E. Knight desires to agree that, during the Term, it shall not supply or commercialize the Product in the Territory other than through Distributor pursuant to this Agreement.

F. Distributor desires to secure the aforementioned rights to commercialize the Product in the Territory and, subject to the terms and conditions of this Agreement, Knight desires to grant such rights to Distributor and to supply the Product to Distributor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants and conditions contained in this Agreement, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND CONSTRUCTION

1.1 Definitions. Unless otherwise specifically provided in this Agreement, the following terms shall have the following meanings:

"**Accounting Standards**" means U.S. GAAP, as generally and consistently applied throughout Distributor's organization.

"**Acknowledgement**" is defined in Section 6.1.

"**Additional Transfer Price Payments**" means additional amounts payable by Distributor in respect of its purchase of Product pursuant to Section 9.1.2.

"**Affiliate**" means, with respect to a Party, any Person that controls, is controlled by, or is under common control with that Party. For the purpose of this definition, "control" shall mean, direct or indirect, ownership of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interest in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby the entity or person controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity, or the ability to cause the direction of the management or policies of a corporation or other entity. For the avoidance of doubt, an entity that shares a common corporate parent with Party shall be considered an Affiliate of such Party if such common parent controls, either directly or indirectly (i.e., through different tiers of ownership), both the Party and the entity at issue.

"**Applicable Laws**" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any governmental authority or Regulatory Authority, domestic or foreign, that are applicable to the particular situation, obligation or circumstances.

"**Background IPR**" is defined in Section 2.9.1.

"**Batch**" means a defined quantity of Product that is Manufactured according to a single manufacturing order.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which commercial banks located in Luxembourg, Montreal, Canada or Chicago, Illinois are authorized or required by law to remain closed.

"**Calendar Quarter**" means the respective period of three consecutive calendar months ending March 31, June 30, September 30 and December 31.

"**Calendar Year**" means each successive twelve (12) months commencing on January 1 and ending on December 31.

"**Certificate of Analysis**" means the certificate of analysis to accompany all Products delivered to Distributor as set forth in the Quality Assurance Agreement.

"**Change of Control**" means, with respect to a Party, a completed transaction where any of the following occurs upon closing of the transaction: (a) any Third Party (or group of Third Parties acting in concert) becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the total voting power of the stock then outstanding of a Party normally entitled to vote in elections of directors; (b) a Party consolidates with or merges into another corporation or entity, or any corporation or entity consolidates with or merges into the Party, in either event pursuant to a transaction in which more than fifty percent (50%) of the total voting power of the stock outstanding of the surviving entity normally entitled to vote in elections of directors is not held by the parties holding at least fifty percent (50%) of the total outstanding shares of a Party preceding such consolidation or merger; or (c) a Party divests or otherwise conveys, transfers or leases all or substantially all of its assets relating to the Product, to any Third Party.

"**cGMP**" means the current Good Manufacturing Practices promulgated by Regulatory Authorities in the Territory where the Product is Manufactured.

[information redacted]

"**COGS**" means the Initial Transfer Price, plus any costs incurred by Distributor for shipping, freight, packaging, and shipping insurance required to transport the Product from the Delivery Point to Distributor's warehouse in the Territory for Commercialization, plus costs associated with any expired Product.

"**Commercialization**" with a correlative meaning for "**Commercialize**", means all activities undertaken with respect to commercialization of the Product in the Territory, including activities relating to marketing, promoting, distributing, importing, offering for sale and/or selling the Product. For greater certainty, Distributor shall be responsible for importing the Product into the Territory, and for secondary packaging and release of the Product in compliance with Applicable Laws. Commercialization does not include Development or primary Manufacture.

"**Commercially Reasonable Efforts**" shall mean, with respect to the efforts to be expended by a party with respect to any objective, reasonable, good faith efforts to accomplish such objective as a diligent business person would normally use to accomplish a similar objective under similar circumstances.

"**Confidential Information**" means all information of a Party disclosed by or on behalf of the relevant Party (whether through its representatives, counsel, directors, officers, employees, agents, subcontractors, or Affiliates (collectively, the "**Representatives**") to the other Party pursuant to this Agreement in written, oral or any other form (such as by permitting examination of tangible items or viewing of premises); and which may include, but is not limited to, technical data, trade secrets, know-how, intellectual property or other materials owned or controlled by Disclosing Party, including, but not limited to, research, product plans, products, samples, specifications, service plans, services, customer lists, customers, markets, software, developments, inventions, processes, formulas, chemical applications, laboratory instruments, laboratory methods of analysis, interpretation of lab results, techniques, technology, manufacturing methods, equipment, designs, drawings, engineering, marketing, distribution and sales methods and systems, sales and profit figures, pricing, finances and other business information, and all analyses, compilations, studies or other materials prepared by Receiving Party containing or based in whole or in part upon such information furnished to Receiving Party by Disclosing Party or its Representatives.

"**Contract Manufacturers**" means any Third Party engaged to perform Manufacturing of the Product.

"**Control**" means, with respect to any material, information, or Intellectual Property Right, that a Party has the legal right or authority (whether by ownership, license or otherwise), as of the Effective Date or during the Term, to grant to the other Party access to, ownership of, or a license or sublicense (as applicable) under, such material, information, or Intellectual Property Right on the terms and conditions set forth herein without violating the terms of any agreement or any other arrangement with any Third Party or misappropriating the proprietary or trade secret information of a Third Party.

"**Defective Product**" means a Product that is damaged or defective when Distributor takes title to the Product pursuant to Section 7.1 below.

"**Delivery Point**" is defined in Section 7.1.

"**Develop**" or "**Development**" means all research and development activities for the Product, including all such activities intended to research, discover or develop and/or to support INDs, NDAs or other Regulatory Approvals for the Product, including, without limitation, (a) toxicology, pre-clinical and clinical drug development activities, and (b) clinical trials.

"**Distributor Indemnification Claims**" is defined in Section 13.1.

"**Distributor Group**" is defined in Section 13.2.

"**Distributor Indemnitees**" is defined in Section 13.1.

"**Diligent Efforts**" means, with respect to Distributor's obligations under this Agreement, the level of efforts in carrying out such obligation in a manner that is at least consistent with the efforts that a pharmaceutical company in a similar position as Distributor typically devotes to a product of similar commercial and scientific potential at a similar stage in its lifecycle, in a similar therapeutic area, taking into consideration safety and efficacy and approved labeling, product profile, the competitiveness of alternative products, pricing and reimbursement, expected profitability and return on investment, including the amounts of marketing and promotional expenditures with respect to the Product and all other relevant factors that are typically taken into consideration by companies in the pharmaceutical industry when determining the level of effort and resources to apply to such tasks.

"**Disclosing Party**" means the Party disclosing Confidential Information.

"**Dispute**" is defined in Section 17.1.

"**Effective Date**" means the date as set forth in the preamble to this Agreement.

"**Exception Notice**" is defined in Section 7.3.

“**FDA**” means the U.S. Food and Drug Administration, or any successor entity thereto performing substantially the same functions.

“**Fees**” mean, collectively, (a) Sourcing Services Fees, (b) Product Fees, (c) Additional Transfer Price Payments, (d) Sourcing Services Payments, or (e) other fees or expenses payable hereunder mutually agreed to by the Parties.

“**Firm Commitment**” is defined in Section 5.7.

“**First Commercial Sale**” means, with respect to the Product in the Territory, the first sale by Distributor to a Third Party of the Product for use therein. For clarity, (a) First Commercial Sale does not include the supply or transfer of a Product among Distributor, its Affiliates and Sublicensees or for clinical trials or other scientific testing purposes, as free samples, patient assistance, charitable purposes, early access or compassionate use programs, under named-patient use, or similar uses, programs and licenses.

“**Force Majeure**” means an event which is beyond a non-performing Party’s reasonable control, including an act of God, strike, lock-out or other industrial/labor dispute (whether involving the workforce of the Party so prevented or of any other Person), war, riot, civil commotion, terrorist act, malicious damage, epidemic, quarantine, fire, flood, storm, natural disaster, sanctions, embargoes, trade restrictions, government actions, or other geopolitical events.

“**Force Majeure Party**” means a Party prevented or delayed in its performance under this Agreement by an event of Force Majeure.

“**Generic Product**” means any product containing the same active pharmaceutical ingredient(s) as the Product and that is approved, submitted for approval, or intended for approval via an Abbreviated New Drug Application or pursuant to Section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (or any foreign jurisdiction equivalents) that refers to, compares with, or references the Product.

“**Gross Sales**” means, with respect to a particular time period, the total amounts invoiced by Distributor, its Affiliates and Sublicensees to Third Party purchasers (including wholesalers) in respect of sales of the Product.

“**Healthcare Professionals**” means individuals who are licensed, registered, or otherwise authorized by Applicable Law in the United States to prescribe, recommend, purchase, supply, or administer pharmaceutical products in the course of their professional practice, including but not limited to physicians, pharmacists, nurse practitioners, physician assistants, and other healthcare providers who are permitted to perform such functions under applicable federal or state law.

“**ICC**” is defined in Section 17.3.

“**IND**” means an investigational new drug application, clinical study application, clinical trial exemption, or similar application or submission for approval to conduct human clinical investigations filed with or submitted to a Regulatory Authority in conformity with the requirements of such Regulatory Authority.

"**Indirect Taxes**" means value added taxes, sales taxes, consumption taxes and other similar taxes relating to sales or purchase of goods and supply of services.

"**Initial Batch**" is defined in Section 5.5.

"**Initial Transfer Price**" means, initially, [information redacted].

"**Intellectual Property Rights**" means Know-How, patents, trademarks, service marks, trade names, design rights, copyright (including rights in computer software) or any rights or property similar to any of the foregoing in any part of the world, whether registered or not, together with the right to apply for the registration of any such rights, and all rights or forms of protection having equivalent or similar effect, in any part of the world.

"**IP Improvement**" means any invention (whether patentable or not), discovery, improvement, or modification of or relating to the Product, including without limitation any manufacturing processes, formulations, dosage forms, delivery systems, dosages, dose regimens, or methods of use, and all other Intellectual Property Rights created by either Party or jointly by the Parties during the Term relating to the Product .

"**Know-How**" means all technical information, know-how and data, including inventions (whether patentable or not), discoveries, trade secrets, specifications, instructions, processes, formulae, materials, expertise and other technology applicable to compounds, formulations, compositions, products or to their manufacture, development, registration, use or commercialization or methods of assaying or testing them or processes for their manufacture, formulations containing them, compositions incorporating or comprising them and including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, preclinical and clinical data, instructions, processes, formulae, expertise and information, Regulatory Materials and copies thereof, relevant to the development, manufacture, use or commercialization of and/or which may be useful in studying, testing, development, production or formulation of products, or intermediates for the synthesis thereof. Know-How includes any rights including trade secrets, copyright, database or design rights protecting such Know-How.

"**Lead Time**" means the agreed time it will take from the date Knight acknowledges receipt of a Purchase Order from Distributor until and including the date of delivery of the Product EXW INCOTERMS (2010) by a Contract Manufacturer to Distributor. The Lead Time shall be twelve (12) months unless otherwise agreed to by the Parties in writing.

"**Long Term Forecast**" is defined in Section 5.6.

"**Manufacture**" means the manufacture of the Product, including the compounding, filling, encapsulating, testing, and primary packaging of Materials by Knight (or any of its permitted Affiliates or subcontractors) to manufacture and produce a Product in accordance with the Product Specifications.

"**Marketing Authorization**" or "**MA**" shall mean the marketing authorization granted by the FDA under NDA No. 204684 for the lawful marketing and sale of the Product in the Territory.

"**Materials**" means raw materials, excipients, intermediates and laboratory reagents, packaging components and materials, devices, labels or other materials used in the Supply of Product.

"**Minimum Net Sales Threshold**" means the minimum annual Net Sales threshold set forth in Section 2.2.3.

"**Minimum Order Quantity**" is defined in Section 6.2.

"**Net Sales**" means Gross Sales, less the following deductions to the extent actually incurred, allowed, accrued or specifically allocated to the Product for such period:

(a) credits, price adjustments or allowances upon prompt payment or for damaged Product, returns or rejections of the Product, including in connection with recalls;

(b) normal and customary trade, cash and quantity discounts, allowances and credits (other than price discounts granted at the time of invoicing which have already been included in the gross amount invoiced);

(c) chargeback payments, repayments and rebates (or the equivalent thereof) granted to or imposed by trade customers, retail and/or specialty pharmacy entities, wholesalers, group purchasing organizations, managed health care organizations, pharmaceutical benefit managers, insurers, or federal, state/provincial, local and other governments, including any or all of their regulatory authorities, agencies, review boards or tribunals or trade customers;

(d) direct, out-of-pocket costs (but not internal FTE costs) incurred in connection with patient support services and dispensing fees, including but not limited to, insurance benefits investigations, and co-pay assistance;

(e) taxes (other than income taxes), duties, tariffs, mandated contributions or other governmental charges levied on and actually paid in connection with the sale of Products, including value added taxes, excise taxes, sales taxes, and a pro rata portion of pharmaceutical excise taxes imposed on sales of pharmaceutical products as a whole and not specific to Products (such as those imposed by the U.S. Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, as amended); and

(f) any other similar and customary deductions which are in accordance with Accounting Standards.

Net Sales shall be calculated using Distributor's internal audited system used to calculate and report net sales for the Product, as such Net Sales calculation may be adjusted for any of the items (a) to (e) above that are not taken into account in such systems. Net Sales shall be accounted for in accordance with the Accounting Standards. To the extent that Distributor (including its Sublicensees, as applicable) provides to any Third Party purchaser discounts or allowances that are applicable to and measured by purchases of the Product and one or more other products (such as a "bundled sale" arrangement), such discounts and allowances shall be allocated between the products (for purposes of the deductions used in calculating Net Sales as above) and such other products in a commercially reasonable manner that does not unfairly or inappropriately bias the level of discounting against the Product (as compared to the other products), such allocation to be determined in good faith by the Parties.

Net Sales shall include the amount or fair market value of all other consideration received by Distributor and its associated parties in respect of sales of the Product, whether such consideration is in cash, payment in kind, exchange, or other form. Net Sales shall not include sales between or among Distributor or its Affiliates or Sublicensees unless any such associated party is the end user. Subject to the above, Net Sales shall be calculated in accordance with the standard internal policies and procedures of Distributor, which shall at all times be in accordance with U.S. GAAP.

Notwithstanding the foregoing, Net Sales shall not include any amounts received for sales of Products supplied (1) for regulatory or governmental purposes, in connection with patient assistance programs, (2) under compassionate use, named patient or other limited access programs, (3) for charitable programs or promotional purposes, or (4) for use in any tests or studies reasonably necessary to comply with any Applicable Law, regulation or request by a Regulatory Authority, in each case for which the amount received does not exceed the COGS of such Product.

"**Package**" and "**Packaging**" means labelling, inspecting, secondary and final finished packaging and packing of the applicable Product, or any activity of a nature similar to the foregoing.

"**Person**" means an individual natural person, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture or similar entity or organization, including a government or political subdivision, department or agency of a government.

"**Pharmacovigilance Agreement**" is defined in Section 2.8.1.

[information redacted]

[information redacted]

"**Product**" means IMPAVIDO® (miltefosine) 50 mg capsules or any other product commercialized under NDA #204684 for Commercialization in the Territory pursuant to the Marketing Authorization.

"**Product Fees**" means amounts paid or payable by Distributor to Knight for Product based on the Initial Transfer Price, determined on an aggregate Calendar Year basis.

"**Product Specifications**" means the finished product specifications for the Product as required by the applicable Marketing Authorization in the Territory and as may be modified from time to time in accordance with the provisions of this Agreement.

"**Product Unit**" means [information redacted]of IMPAVIDO® 50 mg.

“**Purchase Order**” means a purchase order with a unique number issued by Distributor for such quantities of the Product as Distributor commits to purchase from Knight, with a statement of the date on which delivery of such shipment(s) shall be required.

“**Quality Agreement**” is defined in Section 2.8.3.

“**Receiving Party**” means the Party to whom Confidential Information is disclosed.

“**Regulatory Approval**” means, all approvals (including supplements and amendments), licenses, registrations and authorizations of any national, supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, necessary for the clinical testing, manufacture, distribution, use and Commercialization of the Product in a given regulatory jurisdiction in the Territory.

“**Regulatory Authorities**” means any applicable federal, national, regional, state, provincial or local regulatory agencies, departments, commissions, councils or other government entities regulating or otherwise having authority with respect to the Product, including the FDA.

“**Regulatory Materials**” means regulatory applications, submissions, notifications, communications, correspondence, registrations, applications for Regulatory Approvals and other filings made to, received from or otherwise conducted with a Regulatory Authority that are necessary or reasonably desirable in order to obtain or maintain the rights from such Regulatory Authority to develop, manufacture, market, sell or otherwise Commercialize the Product(s) in a particular country, territory or possession.

“**Representatives**” shall mean, with respect to a Party, such Party’s Affiliates and such Party’s and its Affiliates’ respective directors, officers, employees, agents and any other persons or entities (excluding the other Party or its Affiliates) who contribute to the performance of such Party’s obligations under this Agreement.

“**Requesting Body**” shall mean any governmental authority, regulatory agency, court, or other official body with jurisdiction over the Parties or the subject matter of this Agreement, including, without limitation, the FDA or any other federal, state, or local governmental entity that requests, requires, or reviews the filing, disclosure, or redaction of this Agreement or any information contained herein.

“**Rolling Forecast**” is defined in Section 5.7.

“**Serious Adverse Event**” means any undesirable medical occurrence in a patient or clinical investigation subject administered a pharmaceutical product that, at any dose: (a) results in death; (b) is life-threatening; (c) requires inpatient hospitalization or prolongation of existing hospitalization; (d) results in persistent or significant disability or incapacity; (e) results in a congenital anomaly or birth defect; or (f) is a medically important event that, based upon appropriate medical judgment, may jeopardize the patient and may require medical or surgical intervention to prevent one of the outcomes listed in this definition.

“**Sourcing Services Fees**” means the fees payable by Distributor in consideration for Knight’s agreement to provide Supply and Manufacturing services as provided in this Agreement and is based on certain targets, as specified in Exhibit 1.

"**Sourcing Services Payments**" means the payments payable by Distributor to Knight pursuant to Exhibit 1, in consideration for Knight's provision of Supply and Manufacturing services as provided in this Agreement, consisting of the amounts to be paid in accordance with the exhibit set forth therein.

"**Sublicensee**" means an Affiliate to which Distributor has granted a sublicense under the licensed rights granted to Distributor hereunder, to the extent such sublicense grant is permitted and made in accordance with the terms thereof.

"**Supply**" means the Manufacturing and/or Packaging of the Product and all related tests, analysis and all other ancillary services.

"**Taxes**" is defined in Section 9.2.

"**Term**" is defined in Section 15.1.

"**Territory**" means the United States of America.

"**Third Party**" means any Person other than the Parties or their respective Affiliates.

"**Trademark**" means the trademark "IMPAVIDO®" and any other trademarks owned by Knight designated for use in connection with the Product during the Term.

"**Transfer Price**" means, the aggregate of (i) the Initial Transfer Price and (ii) the Additional Transfer Price Payments.

"**United States**" or "**U.S.**" means the United States of America and its possessions and territories, including Puerto Rico, irrespective of the political status.

"**U.S. GAAP**" means, at any time, the Generally Accepted Accounting Principles in the United States of America, as amended, supplemented or replaced from time to time.

1.2 Construction.

1.2.1 Except where the context requires otherwise, whenever used the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word "or" has the inclusive meaning represented by the phrase "and/or". Whenever this Agreement refers to a number of days, unless otherwise specified, such number refers to calendar days. The headings of this Agreement are for convenience of reference only and do not define, describe, extend or limit the scope or intent of this Agreement or the scope or intent of any provision contained in this Agreement. The term "including" or "includes" as used in this Agreement means including "without limiting" or "without limitation." The wording of this Agreement shall be deemed to be the wording mutually chosen by the Parties.

1.2.2 References to Recitals, Articles, Sections and Exhibits refer to the Recitals, Articles, Sections, or Exhibits of and to this Agreement.

1.2.3 The Exhibits (as amended from time to time by agreement of the Parties in writing) form part of this Agreement and have the same force and effect as if expressly set forth in the body of the Agreement. Any reference to the Agreement includes the Exhibits hereto and the Quality Assurance Agreement. In the event of any conflict or inconsistency between the terms of the body of this Agreement and any Exhibits, schedules, or addenda thereto, the terms of such Exhibits, schedules or addenda shall prevail.

1.2.4 Unless otherwise specified, all monetary amounts referred to in this Agreement are stated in United States dollars (USD$).

1.2.5 Notwithstanding the foregoing, any varying or additional terms contained in any Purchase Order or other written order confirmation, notification or document issued by either Party in relation to the subject matter hereof shall be of no effect.

ARTICLE 2
LICENSES, COMMERCIALIZATION, AND INTELLECTUAL PROPERTY RIGHTS

2.1 Licenses.

2.1.1 **Trademark License and Supply Rights**. Subject to the terms and conditions of this Agreement, Knight hereby grants to Distributor and its Affiliates a royalty-free, limited, exclusive in the Territory (except as provided in Section 2.1.2), non-transferable (except as provided in Section 19.4), non-sublicensable ([information redacted]), revocable license to use the Trademark solely in connection with the Commercialization of the Product in the Territory and Distributor's performance of its obligations under this Agreement. Knight shall supply the Product to Distributor and shall cause the Marketing Authorization to be transferred to Distributor, in each case subject to and in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, (i) this Agreement does not grant Distributor any rights to Manufacture, Develop, or otherwise modify the Product or create IP Improvements; and (ii) Distributor's use of the Trademark is limited to use in association with the Product. Distributor acknowledges that its use of the Trademark pursuant to this Agreement shall inure to the benefit of Knight or its Affiliates, and Knight and its applicable Affiliates shall own the goodwill created thereby. Knight shall be responsible for registering and maintaining the Trademark in the Territory.

2.1.2 [information redacted]

2.1.3 **Limitation on Knight**. Knight is effectively granting Distributor an exclusive right of distribution in the Territory for the Product. During the Term, Knight shall not, and shall cause its Affiliates not to: (a) sell, distribute, supply, or otherwise transfer any quantity of the Product in the Territory to any Third Party, whether directly or through any agent, distributor, or intermediary; (b) sell, distribute, supply, or otherwise transfer the Product to any Person that Knight knows or has reason to believe intends to resell, distribute, or otherwise make available the Product in the Territory; (c) grant any license, sublicense, or other right to any Third Party to distribute, market, or sell the Product in the Territory; or (d) enter into any agreement, arrangement, or understanding with any Third Party that would permit or facilitate the sale or distribution of the Product in the Territory. Notwithstanding the foregoing, nothing in this Section shall restrict Knight or its Affiliates from Manufacturing the Product in the Territory for Third Parties for distribution solely outside of the Territory.

2.1.4 **Distributor Liability for Sublicensing**. Distributor may sublicense the rights granted to Distributor by Knight under this Agreement solely to Affiliates (effective while they remain Affiliates of Distributor), subject to Knight's prior written consent, which consent may be withheld in Knight's sole discretion. Any license or sublicense granted by Distributor to an Affiliate shall be consistent in all material respects with, and subject to, the terms of this Agreement. Distributor shall send Knight an executed copy of such license or sublicense promptly, but in no case later than thirty (30) days, after such license or sublicense is entered into by Distributor, and shall keep Knight reasonably informed with respect to any such license or sublicense granted by it. Distributor shall be responsible and liable for the acts and omissions of its Sublicensees performing Distributor's rights or obligations under this Agreement on behalf of Distributor as if the same were performed by Distributor and no sublicense or subcontract arrangement pursuant to this Section 2.1.4 shall relieve Distributor of any of its obligations under this Agreement.

2.1.5 **Other Covenants of Knight**. Knight shall:

(a) provide Distributor with all documentation required for Regulatory Approval and ongoing maintenance of the Product's Marketing Authorization; and

(b) provide reasonable assistance to Distributor for the maintenance of Regulatory Approval of the Product in the Territory.

2.2 Commercialization.

2.2.1 **Diligent Efforts**. Distributor shall be solely responsible for all aspects of Commercialization of the Product in the Territory, including planning and implementation, distribution, marketing, sales, pricing, and returns and shall use Diligent Efforts to Commercialize the Product in the Territory.

2.2.2 **<u>Marketing Plans</u>**. Distributor shall keep Knight regularly and reasonably informed of its general plans for Commercialization of the Product in the Territory. Within ninety (90) days after the Effective Date, Distributor shall submit to Knight for review an initial marketing plan covering the first twelve (12) months following the First Commercial Sale, including details of attendance at major conferences, organization of significant expert advisory panels, key positioning messages, significant medical educational programs, strategic partners, sales force deployment details, promotional budget allocation, and other similar information. Thereafter, by January 31 of each Calendar Year following First Commercial Sale, Distributor on an annual basis shall submit a comprehensive marketing plan for the Product in the current Calendar Year, including the information described above, for review by Knight. In addition to the foregoing, each annual marketing plan submitted by Distributor shall include: [information redacted]. Knight shall have the right to review and provide comments on each marketing plan, and the Parties shall discuss such comments in good faith; provided, however, that, subject to the immediately following sentence, Distributor shall retain final decision-making authority with respect to all commercialization strategies and activities. For greater certainty, Knight's review under this Section is not a discretionary approval right; provided, however, that Knight shall have the right to reject, and to require Distributor to make adjustments to, any marketing plan (or any related marketing or promotional materials) to the extent Knight reasonably determines that the same does not comply with Applicable Laws, the Marketing Authorization, or Knight's trademark usage and brand guidelines as communicated to Distributor from time to time, and Distributor shall reasonably implement any such adjustments prior to use ("**Knight Review Right**"). If Distributor fails to submit a marketing plan by January 31 of any Calendar Year, the Parties shall continue to operate under the then-current marketing plan until such time as a new marketing plan is submitted.

2.2.3 **<u>Minimum Net Sales Threshold</u>**. In addition to the Minimum Order Quantity obligations set forth in Section 6.2, Distributor shall achieve the minimum Net Sales threshold of [information redacted] (the "**Minimum Net Sales Threshold**") for each Calendar Year commencing in the Calendar Year [information redacted]. If Distributor fails to achieve the applicable Minimum Net Sales Threshold for any Calendar Year, and where such failure is not due to circumstances beyond the reasonable control of Eton (e.g., failure by Knight to supply Product, [information redacted], Product recall, regulatory issues), Knight may, at its sole option, terminate this Agreement upon sixty (60) days' written notice to Distributor. For the avoidance of doubt, termination by Knight pursuant to this Section 2.2.3 shall not constitute a termination for material default, breach or cause, and shall not trigger acceleration of Sourcing Services Payments under Section 9.1.6.

2.2.4 **<u>First Commercial Sale Deadline</u>.** Distributor shall achieve First Commercial Sale of the Product in the Territory by than the latest of: [information redacted]; (b) two (2) weeks after delivery of the Initial Batch of fully labeled, Packaged and sellable Product to Distributor. If Distributor fails to achieve First Commercial Sale by such date, Knight may, at its sole option and without prejudice to any other remedies available hereunder: (i) convert the exclusive license granted hereunder to a non-exclusive license; or (ii) terminate this Agreement for cause upon thirty (30) days' written notice to Distributor as set forth in Section 15.3.

2.2.5 **Pricing.** Notwithstanding Section 2.2.1, Distributor may, without Knight's prior approval, (i) implement an initial price increase for the Product of up to [information redacted] above the then-current price in connection with, and effective as of or following, the First Commercial Sale, and (ii) thereafter implement annual price increases of up to [information redacted] above the then-current price in any Calendar Year, in each case subject to fifteen (15) Business Days' prior notification to Knight. Any price establishment or change for the Product (whether to the wholesale acquisition cost, list price, or net effective price) that exceeds the thresholds set forth in clauses (i) and (ii) above, or that is otherwise outside of the parameters set forth in this Section, shall be deemed a "**material change**" and shall require Distributor to submit to Knight a proposed pricing strategy for the Product, including proposed list prices, anticipated discounts and rebates, and market access strategy, for Knight's review and approval (such approval not to be unreasonably withheld, conditioned, or delayed). Prior to the First Commercial Sale, Distributor shall submit to Knight a proposed pricing strategy for the Product, including proposed list prices, anticipated discounts and rebates, and market access strategy, for review and discussion in good faith.

2.3 Diversion.

Distributor hereby covenants and agrees that neither it nor its Affiliates or Sublicensees shall knowingly distribute or sell the Product into countries that are outside of the Territory. As to all such countries outside of the Territory: Distributor and its Affiliates, Sublicensees and distributors shall not, directly or indirectly, solicit or knowingly fulfil any orders for the Product from any prospective purchaser or recipient located in such countries. If Distributor or its Affiliates, distributors or other Sublicensees receives any order from a prospective purchaser located in a country outside of the Territory, Distributor shall, and shall cause its Affiliates, Sublicensees or distributors to, promptly refer that order to Knight or Knight's designee.

2.4 Regulatory Matters.

2.4.1 The Parties shall use Commercially Reasonable Efforts to provide the other Party with any reasonable assistance requested by the other Party from time to time in its efforts to maintain the Marketing Authorization, including: (i) the transfer of the Marketing Authorization to Distributor on behalf of Knight pursuant to Section 2.4.3 below, (ii) timely preparation of answers to any of the Regulatory Authority's deficiency letters in accordance with applicable Regulatory Authority guidelines, and (iii) making its employees who are knowledgeable about the Product reasonably available to the other Party for scientific and technical explanations and advice in connection with maintaining Marketing Authorizations.

2.4.2 Any registration fees, or other out-of-pocket costs and fees, payable to the Regulatory Authority in connection with the Marketing Authorization for the Product, other than the annual FDA prescription drug program fee, shall be paid by Knight and/or its Affiliates, respectively. The costs and expenses incurred by Knight or its Affiliates in obtaining and maintaining the Marketing Authorization shall be borne by Knight and/or its Affiliates. Notwithstanding the foregoing, Distributor shall be responsible for paying the annual FDA prescription drug program fee (PDUFA fee) associated with the Marketing Authorization directly to the FDA when due. Distributor shall pay the PDUFA fee no later than the due date established by the FDA and shall provide Knight with written confirmation of payment, together with reasonable proof of payment, within five (5) Business Days of such payment. Knight shall reimburse Distributor for the PDUFA fee within thirty (30) days of Knight's receipt of Distributor's invoice and proof of payment. If Distributor fails to pay the PDUFA fee when due, Knight may (but shall not be obligated to) pay such fee directly, with any late fees, penalties, or interest assessed by the FDA to be reimbursed to Knight forthwith. Distributor's failure to pay the PDUFA fee when due shall constitute a material breach of this Agreement.

2.4.3 Distributor acknowledges and recognizes that, as of the Effective Date, Knight Therapeutics (USA) Inc. is the valid and exclusive holder of the Marketing Authorization for the Product in the Territory. Within two (2) weeks after September 26, 2026, Knight shall cause Knight Therapeutics (USA) Inc. to initiate, with the Regulatory Authorities, the transfer of the Marketing Authorization to Distributor, who shall upon completion of the required steps, hold the Marketing Authorization on behalf of Knight, as nominee. The Parties acknowledge that all rights, title, and interest in and to the Marketing Authorization shall at all times remain with Knight Therapeutics (USA) Inc. or such other entity as Knight may designate in accordance with this Agreement. Distributor further covenants and agrees that it shall not, directly or indirectly, challenge, contest, or take any action that would impair or adversely affect the rights of Knight Therapeutics (USA) Inc. or Knight in and to the Marketing Authorization, and that all rights to the Marketing Authorization, including any amendments, supplements, or renewals thereof, except for the right of Distributor to hold the Marketing Authorization on behalf of Knight as nominee, shall remain exclusively with Knight Therapeutics (USA) Inc. or such other entity as Knight may designate at all times during and after the Term.

2.4.4 Distributor shall not, and shall not permit any of its Affiliates or Sublicensees to, directly or indirectly (but except in connection with any sublicense): (a) sell, assign, transfer, convey, pledge, hypothecate, mortgage, encumber, or otherwise dispose of or create any lien, security interest, charge, or other encumbrance on or over the Marketing Authorization or any rights therein; (b) grant any option, right of first refusal, or other right to any Third Party with respect to the Marketing Authorization; (c) enter into any agreement, arrangement, or understanding that would or could result in any Third Party acquiring any interest in the Marketing Authorization; (d) take any action that would subordinate, impair, or jeopardize the rights of Knight Therapeutics (USA) Inc. or Knight in and to the Marketing Authorization; or (e) permit or suffer any judgment, attachment, execution, or other legal process to be levied or enforced upon the Marketing Authorization. Any purported sale, assignment, transfer, pledge, encumbrance, or other disposition or creation of any interest in the Marketing Authorization in violation of this Section shall be null and void and of no force or effect. Distributor shall immediately notify Knight of any claim, lien, attachment, or other encumbrance asserted against the Marketing Authorization by any Third Party and shall take all actions necessary to remove or discharge any such claim, lien, attachment, or encumbrance at Distributor’s sole cost and expense.

2.4.5 Distributor shall, at Knight's sole discretion and upon Knight's written request, transfer, assign, or cause to be transferred the Marketing Authorization to Knight Therapeutics (USA) Inc., Knight, or any other entity designated by Knight, upon termination or expiration of this Agreement. Distributor shall execute all documents and take all actions reasonably necessary to effectuate such transfer within thirty (30) days of Knight's request. Distributor hereby irrevocably appoints Knight as its attorney-in-fact, with full power of substitution, to execute any documents and take any actions on Distributor's behalf as may be necessary to effect such transfer if Distributor fails to do so within the specified timeframe. This power of attorney is coupled with an interest and is irrevocable. Notwithstanding the foregoing, upon the occurrence of any of the following events (each, an "**Automatic Transfer Trigger Event**"), Distributor shall be deemed to have automatically and irrevocably assigned, transferred, and conveyed all of its right, title, and interest in and to the Marketing Authorization to Knight Therapeutics (USA) Inc. or such other entity as Knight may designate, effective immediately upon the occurrence of such event, without any further action required by either Party: (i) termination of this Agreement by Knight pursuant to Section 15.3; or (ii) any regulatory action by the FDA that materially impairs Distributor's ability to hold or maintain the Marketing Authorization. Upon the occurrence of an Automatic Transfer Trigger Event, Distributor shall, within five (5) Business Days, execute and deliver to Knight all documents and instruments necessary to evidence and effectuate such automatic transfer, and Distributor hereby irrevocably authorizes Knight to file such documents with the FDA and take all other actions necessary to complete the transfer. For the avoidance of doubt, the automatic transfer contemplated by this Section shall be self-executing and shall not require any notice, demand, or other action by Knight.

2.4.6 Distributor, as the holder of the Marketing Authorization on behalf of Knight, shall be responsible for obtaining, maintaining and fulfilling all legal and regulatory requirements in the Territory at its own cost with respect to the Product during the Term, as required by all Applicable Laws and regulations in the Territory. Notwithstanding the foregoing, Knight shall be responsible for any out-of-pocket costs incurred in connection therewith, and Knight shall reimburse Distributor for any such amounts pursuant to Section 2.4.2.

2.4.7 Subject to the terms of this Agreement, Distributor shall have primary responsibility for all regulatory matters related to the Marketing Authorization, including without limitation: (a) all material communications and notifications to and from the FDA, which Distributor shall promptly forward to Knight within two (2) Business Days of receipt and which Distributor shall not respond to any such material communications without giving Knight prior written notice and opportunity for review and comment (subject to regulatory timelines); (b) all decisions regarding labeling, product information, and any amendments or supplements to the Marketing Authorization; (c) all decisions regarding product recalls, market withdrawals, or field corrections; (d) all decisions regarding adverse event reporting and safety communications; and (e) all other regulatory decisions affecting the Product or the Marketing Authorization. Distributor shall provide Knight with copies of all FDA communications, inspection reports, and regulatory correspondence promptly upon receipt and shall keep Knight informed of any regulatory developments that may affect the Product or the Marketing Authorization. Distributor will cooperate and coordinate with Knight with respect to the foregoing regulatory matters.

2.4.8 Distributor shall be solely responsible for importing the Product into the Territory and for performing secondary Packaging of the Product, including labeling, serialization, and any other Packaging activities required for commercialization in the Territory, all in compliance with Applicable Laws and the Marketing Authorization. Knight shall supply the Product to Distributor in bulk or primary Packaged form as agreed by the Parties, and Distributor shall perform all secondary Packaging at its own cost and expense. All secondary packaging materials and processes shall be subject to Knight's prior written approval and shall comply with the Quality Agreement.

2.5 Off-Label Use Prevention. Distributor shall not, directly or indirectly, promote, market, or advertise the Product for any indication, use, or purpose that is not expressly authorized under the Marketing Authorization or that constitutes off-label use under Applicable Laws. Distributor shall implement and maintain appropriate internal policies and training programs to ensure compliance with this Section, and shall provide evidence of such compliance to Knight upon reasonable request.

2.6 Reference to Materials. As part of its annual business planning process, Distributor shall submit to Knight, no later than ten (10) Business Days prior to an annual review meeting to be set by the Parties prior to the end of each Calendar Year (the "**Annual Review Meeting**"), all promotional, marketing, and advertising materials relating to the Product that Distributor intends to use during the following Calendar Year (collectively, "**Materials**"), including without limitation any materials referencing scientific publications, peer-reviewed journals, clinical studies, abstracts, or other third-party materials. In addition, as part of such annual review, Distributor shall maintain appropriate internal processes and controls to ensure that Knight is promptly informed of any commercial or medical initiative that the Distributor plans, organizes, or supports within the Territory. This obligation includes, without limitation, all commercial programs, medical programs, market research activities, websites, digital or social media initiatives, and any patient support programs. Such Materials and information shall be discussed with Knight at or prior to the Annual Review Meeting. If Distributor wishes to use any additional Materials during the Calendar Year that were not previously presented to Knight, Distributor may do so provided that such Materials comply with this Agreement and all Applicable Laws. Notwithstanding the foregoing, Knight may at any time request to review any Materials used or proposed to be used by Distributor, and Distributor shall promptly provide such Materials upon request. The submission, review, and use of all Materials under this Section shall be subject to the Knight Review Right as set forth in Section 2.2.2. For greater certainty, Knight's review and comment on any Materials pursuant to this Section shall not constitute a warranty or assumption of liability by Knight with respect to such Materials and Distributor shall remain responsible for the content, accuracy, and use of all Materials, including with respect to the conformity with its obligations under this Agreement.

2.7 Permitted Communications. Distributor may only provide non-promotional medical information through its medical department, in response to spontaneous, unsolicited requests for information about the Product from Healthcare Professionals in the Territory, strictly in accordance with Applicable Laws and at all times, in compliance with the covenant and corresponding restrictions set forth in Section 13.7.

2.8 Pharmacovigilance and Quality.

2.8.1 Distributor shall be responsible for all matters relating to the pharmacovigilance of the Product in the Territory. In particular, Distributor will be responsible for collecting all Product safety information and data it receives and for: (a) submitting applicable annual reports and notifying the Regulatory Authority or other relevant governmental authority of all Serious Adverse Events relating to the Product and (b) communicating such information to Knight as per the pharmacovigilance agreement substantially in the form attached hereto as Exhibit 3 to be executed by the Parties as soon as possible after the Effective Date, and in any case no later than one (1) month thereafter ("**Pharmacovigilance Agreement**"). Distributor's failure to execute the Pharmacovigilance Agreement within the above timeframe shall constitute a material breach of this Agreement.

2.8.2 Distributor shall promptly, and in any event within the timeframes set forth in the Pharmacovigilance Agreement, report to Knight any Serious Adverse Events and shall provide Knight with copies of all safety reports and regulatory submissions relating to the Product. Knight shall have the right to audit Distributor's pharmacovigilance systems and records upon reasonable notice. Distributor shall establish and maintain processes and procedures to ensure that medical information queries it receives regarding the Product are responded to promptly and in accordance with Applicable Laws. Specific details regarding the management of information of adverse events, medical inquiries and Product complaints related to the use of the Product in the Territory and outside will be set out in the Pharmacovigilance Agreement.

2.8.3 The Parties shall, at the same time as they enter into the Pharmacovigilance Agreement, also enter into a quality agreement substantially in the form attached hereto as Exhibit 5, detailing each Party's responsibilities for Product quality control and quality assurance (the "**Quality Agreement**").

2.9 Intellectual Property and IP Improvements.

2.9.1 **Pre-Existing IP**. Distributor acknowledges and agrees that Knight (or any Affiliate thereof) owns all Intellectual Property Rights, including for the avoidance of doubt, Know-How, results, data, inventions and information, in and to the Product existing prior to the Effective Date ("**Background IPR**"), and that such Background IPR shall remain the sole and exclusive property of Knight (or the respective Affiliate). Distributor covenants that it shall not, during the Term or thereafter, directly or indirectly contest, challenge, or take any action to dilute or impair Knight's rights in the Background IPR.

2.9.2 **IP Improvements.**

(a) Disclosure of IP Improvements. Distributor acknowledges and agrees that this license does not grant Distributor any rights to create IP Improvements, and it is not contemplated that Distributor will create any IP Improvements. Nevertheless, Distributor shall promptly disclose to Knight all IP Improvements that are conceived, reduced to practice, or otherwise developed by or on behalf of Distributor, its Affiliates, and their Sublicensees. As part of such disclosures, Distributor shall include details of all inventions (whether patentable or not) which Distributor, its Affiliates, and their Sublicensees may develop or discover during the Term, as well as information relating to any IP Improvements.

(b) Ownership. Knight shall have exclusive ownership of any IP Improvements. Distributor hereby unconditionally and irrevocably assigns to Knight all of Distributor's right, title, and interest in, to and under any and all IP Improvements. Distributor shall obtain from each Person involved in the creation of any IP Improvements an assignment of all of right, title and interest of such Person in or to such IP Improvements, including any patent or other Intellectual Property Rights with respect thereto, and shall ensure that all such assignments are valid and enforceable. Distributor shall ensure that all such assignments have been duly recorded or registered with the applicable patent office(s) or other authority(ies) in a manner sufficient to preserve enforceability under Applicable Laws.

(c) Future Improvements/Products. In the event that Distributor provides Knight with a disclosure pursuant to Section 2.9.2(a) above in respect of an IP Improvement to the Product, or in the event that Knight creates an IP Improvement to the Product that could reasonably be expected to materially impact the competitiveness or market position (or pricing) of the Product, or result in the creation of a new product that would be an improvement to the Product and substantially be directed to the same indication as the Product, then (1) in the latter case Knight shall notify Distributor, and (2) in either case, any such IP Improvement to the Product or such new product that is an improvement to the Product shall be added to this Agreement on the same terms as set forth herein, and shall provide Distributor with commercialization rights thereto under the existing terms. For greater certainty, this Section applies solely to IP Improvements to, and new products that are improvements to, the Product, and does not extend to any other products, compounds, or intellectual property of Knight or its Affiliates.

2.9.3 **Cooperation**. As reasonably requested from time to time by Knight, Distributor shall assist and cooperate with Knight in connection with preparing, filing, prosecuting, maintaining, or enforcing any patent or patent application related to IP Improvements, including by (i) offering comments, if any, promptly, (ii) providing access to relevant documents and other evidence and making its employees available at reasonable business hours and (iii) having documents signed or executed as necessary. Distributor covenants that it shall not, during the Term or thereafter, directly or indirectly contest, challenge, or take any action to dilute or impair Knight's rights in any IP Improvements.

2.10 Further Assurances. Each Party shall, at no cost to the other Party, perform (and shall cause its Affiliates and Sublicensees to perform) all further acts and things and execute and deliver such further documents as may be necessary or as the other Party may reasonably require to implement or give effect to this Agreement, including, with respect to execute all such documents and do all such things as may be necessary to vest in Knight the right, title and interest to such IP Improvements.

2.11 Infringement of IP.

2.11.1 Each Party shall promptly notify the other Party in writing of any actual or suspected infringement, counterfeiting, misappropriation, or other unauthorized use of the IMPAVIDO® Trademark or any claim that the Product or its Commercialization infringes the Intellectual Property Rights of any Third Party, of which such Party becomes aware.

2.11.2 Knight shall have the first right, but (except as set forth below) not the obligation, to bring and control any action or proceeding with respect to any infringement, counterfeiting, misappropriation, or unauthorized use of the IMPAVIDO® Trademark or any other Intellectual Property Rights owned or controlled by Knight, at Knight's sole cost and expense. Distributor shall cooperate with Knight in any such action, including by joining as a party plaintiff if required by law, providing access to relevant documents and witnesses, and executing such documents as may be necessary to effectuate Knight's enforcement rights. Any recoveries from such enforcement actions shall be allocated: first, to reimburse each Party's costs and expenses incurred in connection with the action; and second, the remaining balance, other than punitive damages (which shall be retained by Knight), shall be treated as Net Sales for purposes of this Agreement and shared between the Parties in accordance with Section 9.1.2 (Additional Transfer Price Payments). [information redacted].

2.11.3 If Knight elects not to take action with respect to any infringement within sixty (60) days following notice thereof, Distributor may bring an enforcement action at its sole cost and expense, and shall keep Knight reasonably informed of all material developments. Any settlement or compromise of such action shall require Knight's prior written approval, which shall not be unreasonably withheld or delayed. Any recoveries from such enforcement actions shall be allocated: first, to reimburse each Party's costs and expenses incurred in connection with the action; and second, the remaining balance (including punitive damages) shall be treated as Net Sales for purposes of this Agreement and shared between the Parties in accordance with Section 9.1.2 (Additional Transfer Price Payments).

2.11.4 If a claim is brought against Distributor by a Third Party alleging that the Commercialization of the Product infringes such Third Party's intellectual property rights, Distributor shall promptly notify Knight, and Knight shall have the right, but not the obligation, to assume the defence of such claim at Knight's cost and expense. If Knight assumes the defence, Knight shall have sole case management authority, subject to Distributor's right to participate at its own expense.

ARTICLE 3
GOVERNANCE

3.1 **Alliance Managers.** Within thirty (30) days of the Effective Date, each Party shall appoint a representative having a general understanding of pharmaceutical commercialization issues to act as its alliance manager under this Agreement ("**Alliance Manager**"). The Alliance Managers shall be primarily responsible for facilitating the flow of information and otherwise promoting communication, coordination and collaboration within and among the Parties, providing a single point of communication for seeking consensus both internally within the respective Party's organization and, together, regarding key strategy and planning issues, as appropriate, including facilitating review of external corporate communications and raising cross-party or cross-functional disputes to the Parties in a timely manner. Each Party may replace its Alliance Manager upon prior written notice to the other Party**.**

3.2 **Alliance Management Meetings.** The Alliance Managers shall conduct sales and operation planning meetings relating to the Product in the Territory initially every sixty (60) days. The agenda of such meetings may include: (a) market intelligence; (b) Supply capability; (c) regulatory changes; (d) long term forecasts; (e) capacity planning; or (f) such other topics that either Party may raise for discussion in connection with its obligations under this Agreement. Without limiting the foregoing, and subject to confidentiality obligations to Third Parties, Knight will share with Distributor sales figures, data, information, development activities, and other learnings with respect to the Product that relate to Knight's development and commercialization activities outside of the Territory in order to further optimize Distributor's activities under this Agreement. Meetings may be conducted by telephone, video conference, or in-person, as mutually agreed by the Alliance Managers.

ARTICLE 4
TRADEMARKS AND PACKAGING; MATERIALS

4.1 **Branding.** All packaging shall be branded with the Trademark IMPAVIDO®. All rights in the Trademark IMPAVIDO®, and all goodwill relating thereto, shall be solely and exclusively owned by Knight and its Affiliates, as applicable.

4.2 **Artwork and Design.** Distributor shall be responsible for artwork and design for the packaging and labelling in the Territory, which Distributor shall ensure complies with all applicable Regulatory Approvals in the Territory. Distributor shall provide artwork to Knight within one (1) week of the Effective Date for the Initial Batch of Product to be purchased from Knight. Distributor shall be responsible for printing of packaging and secondary packaging of the Product in compliance with Applicable Laws. Distributor shall be entitled to have its trademarks displayed on the packaging for the Product, subject to Knight's prior written approval. The packaging of the Product shall also include the language "distributed by Eton Pharmaceuticals" Distributor shall be solely responsible for serialization of the Product in accordance with all Applicable Laws in the United States, including without limitation the Drug Supply Chain Security Act and any regulations promulgated thereunder by the FDA. Such obligations shall include, but not be limited to, the application of unique product identifiers, the maintenance of transaction information, transaction history, and transaction statements, and compliance with all verification and notification requirements. All costs and expenses associated with Product identification and traceability, including the acquisition and maintenance of any necessary serialization equipment, software, systems, and related services, shall be borne solely by Distributor.

4.3 **Knight Materials.** Knight shall use the Distributor's Long Term Forecasts, Rolling Forecasts, Purchase Orders and Firm Commitments, as defined in Article 6 and Article 7, to order Materials to support manufacture of the Product for the Distributor. Knight shall use Commercially Reasonable Efforts to cause its Contract Manufacturer to procure, inspect, and release Materials as necessary to meet the Firm Commitment.

4.4 **Trademark Quality Control.** Distributor acknowledges that the maintenance of the quality and reputation associated with the IMPAVIDO® Trademark is essential. Accordingly, Distributor agrees that:

(a) all use of the IMPAVIDO® Trademark by Distributor, its Affiliates, and Sublicensees shall be in accordance with Knight's trademark usage guidelines as provided to Distributor from time to time, including guidelines concerning proper trademark attribution, form, style, and presentation;

(b) Distributor shall submit to Knight all materials bearing the IMPAVIDO® Trademark, including packaging, labelling, advertising, promotional materials, and any other materials intended for public distribution, as part of the annual review process set forth in Section 2.2.2, and such submission and review shall be subject to the Knight Review Right. Following such annual review, Distributor may use such materials, and any additional materials bearing the IMPAVIDO® Trademark, during the applicable Calendar Year without further submission, provided that such materials comply with this Agreement, Applicable Laws, and Knight's trademark usage guidelines as communicated to Distributor from time to time. Notwithstanding the foregoing, Knight may at any time during the Calendar Year request to review any materials bearing the IMPAVIDO® Trademark used or proposed to be used by Distributor, and Distributor shall promptly provide such materials upon request. Knight's sole right with respect to such materials is to require modifications to the extent reasonably necessary to address non-compliance with Applicable Laws, Knight's trademark usage guidelines, or this Agreement, and Distributor shall implement such modifications prior to further use;

(c) upon Knight's request, Distributor shall provide samples of all materials bearing the IMPAVIDO® Trademark and such other information as Knight may reasonably request to verify Distributor's compliance with this Section 4.4;

(d) Distributor shall not use the IMPAVIDO® Trademark in any manner that would reasonably be expected to damage, dilute, or tarnish the reputation or goodwill associated with the IMPAVIDO® Trademark;

(e) Distributor shall promptly notify Knight of any actual or suspected infringement, counterfeiting, or unauthorized use of the IMPAVIDO® Trademark of which Distributor becomes aware. Knight shall have the sole right, but not the obligation, to take such action as it deems appropriate with respect to any such infringement. Distributor shall cooperate with Knight in any enforcement action at Knight's expense; and

(f) Distributor shall not register or attempt to register any trademark, trade name, domain name or other identifier that incorporates or is confusingly similar to the IMPAVIDO® Trademark without Knight's prior written consent; provided, however, that Distributor may, in its discretion and without Knight's prior consent, register one or more domain names that incorporate the IMPAVIDO® Trademark solely as a backup to ensure continuity of Commercialization of the Product in the Territory (each, a "**Backup Domain**"), provided that (i) Distributor shall promptly notify Knight in writing of any such registration, (ii) Distributor shall hold each Backup Domain for the benefit of Knight, (iii) Distributor shall be entitled to use each Backup Domain solely during the Term of this Agreement, and (iv) upon Knight's written request following expiration or termination of this Agreement, Distributor shall, at Distributor's cost, promptly transfer to Knight (or its designated Affiliate) all right, title and interest in and to such Backup Domain and execute such documents and take such actions as Knight may reasonably require to effect such transfer.

ARTICLE 5
PERFORMANCE OF MANUFACTURING AND SUPPLY

5.1 **Knight Responsibilities.** In consideration for the Sourcing Services Fees, Knight shall perform Supply and Manufacturing services in accordance with professional standards and shall use Commercially Reasonable Efforts to Supply the Product according to the Agreement. Knight shall supply the Product to Distributor at a price equal to the Transfer Price. Knight shall use Commercially Reasonable Efforts to minimize its costs incurred to acquire Product.

5.2 **Subcontracting.** Knight, directly or through an Affiliate, shall be entitled to subcontract to a Contract Manufacturer or any other Third Party any or all of its obligations to Manufacture and Supply the Product under this Agreement. No subcontracting pursuant to this Section 5.2 shall relieve Knight of any of its obligations, or Distributor of any of its rights, under this Agreement.

5.3 **Quality.** Knight shall ensure that the Product is Manufactured and Supplied in accordance with the provisions and requirements of the Quality Agreement. In the event of a discrepancy between the Quality Agreement and this Agreement, the terms of the Quality Agreement shall control all quality matters and this Agreement shall control all other matters. For clarity, the Quality Agreement shall provide for customary and reasonable audit rights for Distributor of Knight and, to the extent permitted under, and subject to the limitations and procedures set forth in, Knight's agreements with its subcontractors and critical suppliers, of such subcontractors and critical suppliers.

5.4 **GMP.** All Manufacture and quality control and storage operations by Knight or its designee shall be in compliance with cGMP.

5.5 **Shelf Life.** Except with respect to an initial batch of Product to be supplied by Knight shortly after the Effective Date (the "**Initial Batch**"), any further Batches of the Product supplied by Knight hereunder shall have not less than [information redacted] of its shelf life remaining upon delivery to Distributor, but in any event never less than [information redacted].

5.6 **Long Term Forecasts.** Within sixty (60) days following the Effective Date, Distributor shall submit to Knight a single good faith estimate of the quantities of the Product that Distributor expects to order from Knight for the duration of the Initial Term (the "**Long Term Forecast**"). [information redacted]. Thereafter, prior to June 30 of each Calendar Year during any Renewal Term, Distributor shall submit to Knight an updated Long Term Forecast covering the remaining portion of the then-current Term. Subject to the terms of Section 5.7, Long Term Forecasts shall be non-binding.

5.7 Rolling Forecast; Binding Firm Commitment. Within ten (10) Business Days after the end of each month during the Term, Distributor shall submit to Knight a [information redacted] rolling forecast of its anticipated orders of the Product, which shall be at a SKU level, broken out on a month-by-month basis (each, a "**Rolling Forecast**"). The first [information redacted] of each Rolling Forecast shall be binding on Distributor for the quantities specified therein ("**Firm Commitment**") and may not be changed without Knight's written consent (which may be withheld in its sole discretion).

5.8 Forecasts Exceeding the Firm Commitment. If Distributor forecasts to require more than the Firm Commitment, Distributor must provide Knight at one hundred eighty (180) days prior notice of the delivery date requested and Knight shall inform Distributor of the quantity of Product (if any) above the Firm Commitment that Knight is able to Supply. Knight shall not be obligated to supply Product in excess of the Firm Commitment to Distributor unless agreed to by Knight in its sole discretion.

5.9 Supply Allocation and Limitation.

5.9.1 In the event of a shortage or supply constraint affecting the Product due to manufacturing capacity limitations, raw material shortages, regulatory actions, Force Majeure events, or other circumstances beyond Knight's reasonable control ("**Supply Constraint**"), Knight shall have the right to allocate available quantities of the Product among Distributor and Knight's other customers (including Knight's own commercial operations) in a fair and reasonable manner, taking into account: (i) contractual commitments; (ii) historical purchase volumes; (iii) medical necessity and patient needs; and (iv) regulatory requirements. Knight shall use Commercially Reasonable Efforts to notify Distributor of any Supply Constraint as soon as practicable and to provide Distributor with an estimated timeline for resolution.

5.9.2 Notwithstanding any provision to the contrary herein, Knight shall not be liable to Distributor for any damages, losses, or claims arising out of or related to any Supply Constraint, provided that Knight has used Commercially Reasonable Efforts to mitigate the impact of such Supply Constraint, and except to the extent such Supply Constraint is caused (in whole or in part) by (i) a material breach by Knight of its express Manufacture or supply obligations under this Agreement or (ii) the gross negligence or wilful misconduct of Knight itself (and not, for greater certainty, of any Contract Manufacturer or other Third Party). Knight shall be obligated, in the event of a Supply Constraint, to use Commercially Reasonable Efforts to restore supply to normal levels as soon as practicable. For clarity, the limitations set forth in Section 13.7 shall apply to Knight's liabilities in all circumstances.

5.9.3 Distributor acknowledges that certain raw materials and components necessary for the Manufacture of the Product may be subject to limited availability, single-source supply, or other constraints. Distributor agrees to cooperate with Knight in managing supply chain risks, including by providing accurate and timely forecasts, accepting reasonable allocations during periods of Supply Constraint, and supporting efforts to qualify alternative suppliers or manufacturing sites.

ARTICLE 6
ORDERS

6.1 Purchase Orders. Distributor shall submit to Knight a Purchase Order for the applicable Product to be delivered to Distributor upon the agreed Lead Time. Promptly following receipt of a Purchase Order, Knight shall provide a written acknowledgement ("**Acknowledgement**") that it accepts or rejects the Purchase Order. The Acknowledgement shall confirm the delivery date that shall occur within [information redacted] of receipt of the Purchase Order. Notwithstanding the foregoing, the first and initial Purchase Order for the Product for the Initial Batch, including the corresponding shelf life and expiry date applicable thereto, shall be mutually agreed upon between the Parties in writing.

6.2 Minimum Order Quantity. Each Purchase Order shall set forth the desired quantity of Product in Batch size increments. For clarity, Distributor may not, unless agreed upon in writing on a case-by-case basis, forecast or order partial Batches of Product. The minimum order quantity per Purchase Order shall be [information redacted] Product Units (the "**Minimum Order Quantity**"). If Distributor's aggregate purchases of Product are less than the aggregate Minimum Order Quantity that would have applied had Distributor placed at least one (1) Purchase Order in each Calendar Year, Knight shall have the right, in addition to any other remedies available at law or in equity, to invoice Distributor for the resulting shortfall at the then-applicable Initial Transfer Price, and Distributor shall pay such invoice within thirty (30) days of receipt; provided that no such right, or amount payable, shall apply in the event of any supply disruption or other failure to supply that results in Knight being unable to fulfill its obligation to provide the said quantities or in the event of any regulatory action related to the Product that adversely impacts demand. Failure by Distributor to meet the Minimum Order Quantity, measured on the same rolling basis, for two (2) consecutive Calendar Years shall constitute a material breach of this Agreement, entitling Knight to terminate this Agreement for cause upon written notice to Distributor. The Parties may review and adjust the Minimum Order Quantity annually by mutual written agreement, provided that any reduction shall require Knight's prior written consent in its sole discretion.

6.3 Modifications; Changes to Purchase Orders.

6.3.1 Knight shall use Commercially Reasonable Efforts to comply with changes to Purchase Orders that Distributor may request but shall not be liable for its inability to do so. Purchase Orders may be amended only by mutual agreement of the Parties.

6.3.2 If Distributor fails to provide Distributor-supplied Materials to meet the requirements of a Purchase Order, to the extent any such Materials are reasonably required, at Knight's reasonable discretion and as advised to Distributor in writing from time to time, Knight reserves the right to cancel all or any part of such Purchase Order upon written notice to Distributor and, upon doing so, shall have not further obligations or liability with respect to such Purchase Order. Knight shall use Commercially Reasonable Efforts to re-schedule any manufacturing processes following the receipt of any outstanding Distributor-supplied Materials.

6.3.3 No change in any Purchase Order shall relieve Distributor of its responsibility to meet the Firm Commitment.

6.4 **Supply.** Knight shall have Supplied the specified quantity of the Product in accordance with the delivery terms set forth in each Purchase Order, provided that (a) Knight shall be considered to have completed its obligations to fulfill any individual Purchase Order if it Supplies a quantity of Product that is within a plus or minus twenty per cent (20%) variance from the applicable Purchase Order, and (b) Distributor shall only be required to pay for the amount of Product actually delivered by Knight to Distributor.

6.5 **Changes.**

6.5.1 A Party shall promptly notify the other Party in writing of all proposed changes, whether voluntary or involuntary, including those arising from a request from a Regulatory Authority, concerning the quality of Product and/or documentation or other items for such changes relating to the quality of the Product. The Parties shall negotiate in good faith towards an appropriate response to a Regulatory Authority in respect of each proposed change in the quality of the Products including any costs associated with implementing said changes. Knight shall notify Distributor of any proposed change in manufacturing facility or manufacturing procedures.

6.5.2 Knight shall ensure that any changes in manufacturing sites shall be done in accordance with FDA requirements and will prepare the documents required for the supplemental regulatory filings. Knight shall provide these documents to Distributor for review, approval and submission to the FDA. Prior to FDA approval of the new manufacturing site, Knight shall continue to manufacture inventory for Distributor from the previous approved sites, until the new manufacturing site has been approved by the FDA. The parties will work together in good faith to minimize the number of changes that occur.

ARTICLE 7
DELIVERY; REVIEW AND DEFECTIVE PRODUCT

7.1 **Delivery Terms.** Knight shall deliver and Supply each Product ordered by Distributor CIP INCOTERMS® 2010, to the place of destination designated by Knight (the "**Delivery Point**"). Distributor shall be solely responsible for arranging and paying for all transportation, freight, and insurance from the Delivery Point. Risk of loss or damage to the Product shall pass to Distributor upon Knight's delivery of the Product to the Delivery Point. Title to the Product shall transfer from Knight to Distributor upon pick up by Distributor or its authorized carrier at the Delivery Point. Distributor shall pick up the Product within ten (10) Business Days following Knight's written notice that the Product is available for collection; failure to do so may result in storage charges at Knight's then-current rates, which Distributor shall pay within thirty (30) days of invoice.

7.2 **Release of Batches.** Each order of the Product shall be accompanied by a Certificate of Analysis and a certificate of manufacturing compliance, which may be contained in a single certification, and any other documentation as set forth in the Quality Assurance Agreement. Issuance of a Certificate of Analysis and certificate of manufacturing compliance, and any other documentation as set forth in the Quality Assurance Agreement constitutes release of a Batch to Distributor. Distributor is responsible for final release of the Product to the market. Knight, or its designee, shall only release for shipment to Distributor, finished batches of Product that have been examined by Knight for compliance with the Product Specifications. Knight is responsible for conducting, or having conducted, all required stability and release testing to ensure that the finished batches of Product are in compliance with the Product Specifications.

7.3 Review; Defects or Shortfalls. If any shipment of Product delivered by Knight contains any damage, shortage or defect of the Product, Distributor shall notify Knight (a) within fifteen (15) Business Days of receipt of the Batch if such damage, defect or shortfall can be ascertained by the exercise of reasonable diligence upon examination by Distributor on receipt at Delivery Point of such shipment, or (b) within fifteen (15) Business Days after discovery of the same if such damage, defect or shortfall cannot be ascertained by the exercise of reasonable diligence upon examination by Distributor on receipt of such shipment and provide Knight with a sample of any defective Product. If and to the extent that Distributor has failed to provide Knight with a notice of any Defective Product (an "**Exception Notice**") and a sample thereof by the applicable time period specified above in this Section 7.3, the relevant Batch shall be deemed to have been accepted by Distributor in satisfactory condition, without any damages, shortages or defects.

7.4 Discrepant Results. If a dispute arises between the Parties as to any claimed damage or defect in the Product or as to any shortfall of Product delivered, which cannot be resolved by the Parties within twenty (20) Business Days of a claim being notified by Distributor to Knight, either Party may require that the matter in dispute be referred to an independent expert (such as an independent testing laboratory) nominated by agreement of the Parties or, failing agreement, appointed in accordance with the commercial arbitration rules of the International Chamber of Commerce at the request of either Party. Such referral shall be solely for the purpose of establishing whether or not there is any damage, defect or shortfall (as the case may be) in the applicable Product delivered by Knight to Distributor. Unless otherwise agreed to by the Parties in writing, the costs associated with such testing and review shall be borne by Knight if Product is Defective Product attributable to Manufacturing by or on behalf of Knight, and by Distributor in all other circumstances. Distributor shall be apprised in writing of all Defective Product investigations executed by Knight, as well as final investigation outcome and conclusion(s).

7.5 Remedies for Knight-Attributable Defective Product. If any order of the Product contains a Defective Product due to Manufacturing by or on behalf of Knight, Knight shall at Knight's option either: (a) replace the Defective Product with conforming Product, at Knight's expense; or (b) credit or refund to Distributor the amounts paid to Knight by Distributor for such Defective Product, or, if the invoice has not been paid, cancel the invoice. THE OBLIGATION TO REPLACE DEFECTIVE PRODUCTS OR CREDIT OR REFUND PAYMENTS MADE BY DISTRIBUTOR FOR DEFECTIVE PRODUCT ATTRIBUTABLE TO ERRORS OR DEFECTS IN MANUFACTURING BY OR ON BEHALF OF KNIGHT SHALL BE DISTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY THIS AGREEMENT FOR DEFECTIVE PRODUCT AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED.

ARTICLE 8
PRODUCT RECALLS

8.1 Recalls. In the event that either Party reasonably believes that a recall of Product in the Territory is required or otherwise appropriate, Knight and Distributor shall, as promptly as practicable, discuss the rationale for any such potential Product recall, including an assessment of the potential business impact in the Territory; provided that the Parties must mutually agree with regard to Product recalls implemented within the Territory, and neither Party shall initiate any voluntary recall of Product in the Territory without prior notice to and approval of the other Party. Prior to executing any recall of Product in the Territory, Distributor shall review with Knight the proposed manner in which the recall is to be carried out. Distributor will give due consideration to any reasonable recommendation from Knight as to the manner of conducting the recall, provided that it is agreeable to the applicable Regulatory Authorities. Knight shall provide all assistance that Distributor reasonably requires in connection with the Product recalls, including as required by any Regulatory Authorities or pursuant to Applicable Laws.

8.2 Costs.

8.2.1 If the Product's recall in the Territory results from any defect in Manufacture or from the handling, shipping or storage of Product by Knight or its agents prior to delivery to Distributor, or results from Knight's negligence or any breach of this Agreement by Knight, all costs and expenses arising from the recall, including any costs associated with replacing recalled Products, shall be paid for by Knight and Knight shall indemnify Distributor against any Third Party claims in connection therewith.

8.2.2 If the Product's recall in the Territory results from any act or omission in connection with the Commercialization, secondary Packaging, labelling, handling, shipping or storage of the Product by Distributor or its Affiliates, Sublicensees or agents after delivery by Knight, or results from Distributor's negligence or any breach of this Agreement by Distributor, all costs and expenses arising from the recall, including any costs associated with replacing recalled Products, shall be paid for by Distributor and Distributor shall indemnify Knight against any Third Party claims in connection therewith.

8.2.3 In all other cases, the costs associated with the recall shall be equally split by the Parties.

ARTICLE 9
FEES AND PAYMENTS

9.1 Sourcing Services Fees; Product Pricing and Additional Transfer Price. Distributor shall pay Knight all Sourcing Services Fees, Product Fees, Sourcing Services Payments, and Additional Transfer Price Payments as set forth in this Article 9.

9.1.1 <u>Sourcing Services Fees</u>. Upon the achievement of each target specified in Exhibit 1, Distributor shall pay Knight the associated Sourcing Services Fees, which Fees shall be non-refundable, non-creditable and not subject to set-off.

9.1.2 <u>Additional Transfer Price Payments</u>. During the Term, Distributor shall pay Knight additional consideration for its purchase of Product hereunder based on Net Sales of Product in the Territory, less the COGS paid by Distributor to acquire the Product, on a quarterly basis, as follows (collectively, the "**Additional Transfer Price Payments**"):

9.1.3 Additional Transfer Price Rates. The Additional Transfer Price Payments shall be calculated as: [information redacted]. For clarity, the thresholds set forth in this Section 9.1.3 shall be calculated on a Calendar Year basis.

9.1.4 Monthly and Quarterly Reports; Annual True-Up. Within ten (10) Business Days following the end of each calendar month following the First Commercial Sale of the Product in the Territory, Distributor shall furnish to Knight a monthly written report providing (a) the estimated number of units sold in the previous month; (b) estimated Net Sales information by customer. Within forty (40) days following the end of each Calendar Quarter following the First Commercial Sale of the Product in the Territory, Distributor shall furnish to Knight a quarterly report providing the additional transfer price calculation containing the following information: (a) number of units sold in the previous Calendar Quarter by batch and by customer; (b) Net Sales detailed information as per definition of Net Sales by customer; (c) inventory of the Product on hand (by batch number and expiry date); and (d) stock in trade (if available). The Additional Transfer Price Payments due under Section 9.1.3 for each Calendar Quarter shall be due and payable to Knight within forty (40) days following the end of each Calendar Quarter. Knight shall have the right to audit the books, records and accounts under the scope of this Agreement, either by using internal Knight resources or by appointing an independent auditor nominated by Knight. The final reconciliation of each Calendar Year shall include a true-up calculation for the entire Calendar Year, comparing the aggregate Additional Transfer Price Payments made during such Calendar Year to the Additional Transfer Price Payments that would have been due based on actual annual Net Sales for such Calendar Year. Any underpayment shall be paid by Distributor within forty (40) days following the delivery of the annual reconciliation report. Any overpayment shall be credited against the Additional Transfer Price Payments or, at Knight's election, refunded to Distributor within forty (40) days.

9.1.5 **Sourcing Services Payments**. The Parties acknowledge and agree that, subject to Section 9.1.6 the Sourcing Services Payments in the aggregate amount of [information redacted] shall become due and payable in accordance with the payment schedule set forth in Exhibit 1. The Sourcing Services Payments, once becoming due and payable, are non-refundable, non-creditable, and not subject to set-off or reduction for any reason, including but not limited to failure to achieve any sales targets, failure to commercialize the Product, or any claims or counterclaims asserted by Distributor against Knight. For clarity, the payment schedule set forth in Exhibit 1 (providing for payments on April 1, 2027, June 30, 2028, June 30, 2029, and June 30, 2030) represents payment terms applicable to the Initial Term only.

9.1.6 Acceleration Upon Breach. Notwithstanding the payment schedule set forth in Exhibit 1, if Knight exercises its rights pursuant to Section 15.3, and the cure period, as applicable, has expired without such breach being cured in accordance with terms of Section 15.3, the entire outstanding balance of the total Sourcing Services Payments of [information redacted] (less any amounts previously paid by Distributor to Knight on account of Sourcing Services Payments) shall become immediately due and payable to Knight.

9.2 **Taxes.** All Fees are exclusive of all sales, use, transfer, excise, value added and other direct taxes or Indirect Taxes applied to its (or its Affiliates') sale of the Product or receipt of services (collectively, "**Taxes**"), which, if payable, shall be borne and paid by Distributor (without any set-off, deduction or withholding against any other amounts due hereunder), subject to the provision by Knight of an appropriate invoice listing such Taxes. Notwithstanding the foregoing, the Parties shall share equally the cost of any import duties or tariffs applicable to the Product. In the event that there is a tariff or import duty, the Parties agree to work in good faith to implement the most efficient structure mitigating this impact. The Parties acknowledge and agree that their mutual understanding and intention is that none of payments to be made under this Agreement are currently subject to any deduction or withholding for or on account of Taxes under Applicable Laws, and therefore, provided that Knight delivers to Distributor a properly completed and executed IRS Form W-8BEN-E claiming the benefits of the Convention Between the Government of the Grand Duchy of Luxembourg and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, Distributor will not withhold or deduct amounts in respect of U.S. withholding taxes from payments to Knight under this Agreement, except as may be required as a result of a change in applicable law. If, as a result of such a change in law, Distributor determines that it is required to withhold amounts from any payments to Knight under this Agreement, Distributor shall provide reasonable advance notice to Knight of its intention to withhold and shall provide Knight a reasonable opportunity to take (with Distributor's cooperation) any measures that could reduce or eliminate the amount of such withholding. Any tax withheld on amounts payable by Distributor under this Agreement will be timely paid by Distributor on behalf of Knight to the appropriate governmental authority, and Distributor will furnish Knight with the corresponding proof of payment of such tax, as may be required in order to enable Knight to request reimbursement or deduction of the withheld amount, or to otherwise comply with its duties.

9.3 **Characterization of Payments.** The Parties acknowledge and agree that all Fees and other amounts payable by Distributor to Knight under this Agreement, including without limitation the Sourcing Services Fees, Product Fees, Sourcing Services Payments, and the Additional Transfer Price Payments, are paid exclusively as consideration for the purchase of Product from Knight and services with respect to the Supply and Manufacturing of Product, and do not constitute, and shall not be characterized as, royalties, license fees, or other payments for the use, exploitation, or licensing of any Intellectual Property Rights, Background IPR, Know-How, patents, copyrights, trade secrets, or the IMPAVIDO® Trademark. For the avoidance of doubt , no portion of any Fee or payment hereunder is attributable to, or is paid in respect of, any transfer, assignment, license, or right to use any Intellectual Property Rights (including the IMPAVIDO® Trademark), and the Parties shall not take any position to the contrary with any taxing authority or Regulatory Authority. Each Party shall use Commercially Reasonable Efforts to cooperate with the other Party to provide any certificates, documentation, or other information reasonably required by any taxing authority to support the characterization of payments as set forth in this Section.

ARTICLE 10
INVOICING AND PAYMENT

10.1 **Payment of Invoices.** According to Section 7.1, Knight shall issue an invoice after delivery of the Product.

10.2 **Payment Terms.** Payment of invoices shall be made by Distributor within thirty (30) days of the date of invoice, unless any other payment terms are specified.

10.3 **Means of Payment; Currency.** All payments to be made by Distributor to Knight under this Agreement shall be made in U.S. Dollars and by bank wire transfer in immediately available funds to such U.S. bank account as may be designated in writing by Knight from time to time.

10.4 **Late Payments.** If payment of any amount is overdue, Knight may charge interest on the overdue amount, from the due date of payment until the date of actual payment, at the rate of one percent (1%) per month.

10.5 **Suspension Right.** If Knight provides notice to Distributor that it has failed to pay any amounts due hereunder and Distributor failure to pay any outstanding amount within ten (10) days of notice of such outranking, past due payment in and the matter has been escalated in accordance with Section 17.1 (without requiring Knight to refer such matter to arbitration for resolution pursuant to Section 17.2), then Knight may, in addition to its rights in respect of termination for material breach by Distributor, stop further Supply of the Product until payment is made.

ARTICLE 11
BOOKS AND RECORDS; AUDIT RIGHTS

11.1 **Maintained by Knight.** Knight shall maintain, or cause to be maintained, all records necessary to comply with all Applicable Laws in the countries as to which Regulatory Approvals for the Product have been granted relating to the Manufacturing of the Product; provided Distributor has previously notified Knight in writing of any such records requirements which are more restrictive than U.S. law.

11.2 **Maintained by Distributor.** Distributor shall maintain complete and accurate records of all sales of the Product in the Territory and payments hereunder in sufficient detail to permit Knight to determine and confirm, using standard audit practices, that Distributor is complying with its diligence commitments as set forth in this Agreement and that the Additional Transfer Price Payments or other amounts are being paid to Knight. All such records shall be maintained for at least five (5) years or such longer period as may be required by Applicable Law.

11.3 Audit Rights; Costs. Upon reasonable prior notice, but no more than once per Calendar Year, Distributor shall make such records and underlying data available during regular business hours for a period of three (3) years from the end of the Calendar Year in which such individual records were created, for examination by Knight (using its internal resources) and/or an independent auditor appointed by Knight. Distributor shall provide full access to all underlying data supporting its records, whether such audit is conducted by Knight's internal personnel or by an independent auditor. Any independent auditor engaged by Knight shall not disclose any Confidential Information of Distributor to any Third Party, except to the extent such disclosure is necessary to verify the accuracy of the reports furnished by Distributor or the amount of payments due by Distributor under this Agreement. Any Confidential Information of Distributor received by Knight in the course of an audit conducted by Knight's internal personnel shall be used solely for the purpose of verifying Distributor's compliance with this Agreement and determining the accuracy of payments due hereunder. Any amounts shown to be owed but unpaid shall be paid within thirty (30) days from the auditor's report, plus interest (calculated at the rate as set forth in Section 10.4) from the original due date. Any amounts shown to have been overpaid shall be refunded within sixty (60) days from the auditor's report. Knight shall bear the full cost of such audit unless such audit discloses an underpayment by Distributor of the amounts actually owed during the applicable audited period of more than five percent (5%), in which case the Distributor shall bear the reasonable cost of such audit.

11.4 Additional Audit Rights. In addition to the audit rights set forth in Section 11.3, Knight shall have the right, upon reasonable prior notice and during regular business hours, to audit and inspect:

11.4.1 Distributor's pharmacovigilance systems, records, and procedures to verify compliance with Section 2.8 and any pharmacovigilance agreement;

11.4.2 Distributor's marketing and promotional materials and activities to verify compliance with Section 2.5, Section 4.4, and Applicable Laws. Notwithstanding any approval granted by Knight, Distributor shall remain solely responsible for ensuring that all Materials and promotional or marketing activities comply with all Applicable Laws, and Knight's review or approval of any Materials shall not relieve Distributor of such responsibility or create any liability on the part of Knight;

11.4.3 Distributor's inventory records to verify compliance with Section 6.2 and the anti-diversion covenants set forth in Section 2.3; and

11.4.4 Distributor's regulatory records, files, and correspondence relating to the Marketing Authorization, including all FDA communications, submissions, reports, and other documents maintained by Distributor in connection with its holding of the Marketing Authorization as nominee. Such regulatory audits may be conducted at any time upon reasonable notice (which may be less than the notice required for other audits under this Section 11.4), and Knight shall have the right to copy and retain any documents reviewed during such audit.

Such audits may be conducted no more than once per Calendar Year (except in the event of a material concern or suspected breach) and Knight shall use reasonable efforts to minimize disruption to Distributor's business operations.

11.5 Distributor's Audit Rights. Distributor shall have the right, upon reasonable prior notice and during regular business hours, to audit and inspect:

11.5.1 Knight's pharmacovigilance systems, records, and procedures, in each case, solely to the extent relating to the Product, to verify compliance with any pharmacovigilance agreement or quality agreement;

11.5.2 Knight's Contract Manufacturer (or to have Knight conduct such audit on Distributor's behalf, with the results being shared with Distributor to the extent permitted under, and subject to the timing, frequency, notice, confidentiality, and other limitations and procedures set forth in, the relevant agreement between Knight and such Contract Manufacturer and the Quality Agreement); for greater certainty, any audit of a Contract Manufacturer shall be subject to, and shall not exceed, the audit rights available to Knight under its agreement with such Contract Manufacturer;

11.5.3 Knight's regulatory records, files, and correspondence relating to the Marketing Authorization, including all FDA communications, submissions, reports, and other documents maintained by Knight in connection with the Marketing Authorization. Such regulatory audits may be conducted at any time upon reasonable notice (which may be less than the notice required for other audits under this Section 11.5), and Distributor shall have the right to copy and retain any documents reviewed during such audit; provided that all such records, files, correspondence, copies, and other information reviewed, copied, or retained by Distributor under this Section 11.5.3 shall constitute Knight's Confidential Information. Such audits may be conducted no more than once per Calendar Year (except in the event of a material concern or suspected breach) and Distributor shall use reasonable efforts to minimize disruption to Knight's business operations.

11.6 **Annual Compliance Certification.** Within sixty (60) days after the conclusion of any Calendar Year during the Term, Distributor shall deliver to Knight a certificate signed by a senior officer of Distributor (at the level of Vice President or higher) certifying that: (a) Distributor has complied with all material terms and conditions of this Agreement during the preceding Calendar Year; (b) Distributor has complied with all Applicable Laws in connection with its commercialization of the Product; (c) all reports and information provided by Distributor to Knight during such Calendar Year were accurate and complete in all material respects; and (d) to such officer's knowledge, no event has occurred that would constitute a material breach of this Agreement. if Distributor is unable to provide such certification without qualification, the certificate shall describe in reasonable detail any known or suspected non-compliance or breach. Distributor's failure to deliver the annual compliance certificate within the required timeframe shall constitute a material breach of this Agreement.

ARTICLE 12
REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 **Mutual Representations and Warranties.** Each Party hereby represents, warrants, and covenants (as applicable) to the other Party as of the Effective Date and during the Term, as follows:

12.1.1 It is a company or corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated, and has full corporate power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as contemplated in this Agreement.

12.1.2 It has the corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder.

12.1.3 It has taken all necessary corporate action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder.

12.1.4 This Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms except to the extent enforceability is limited by bankruptcy, insolvency or similar laws affecting creditors' rights and remedies or equitable principles.

12.1.5 The performance of its obligations under this Agreement will not conflict with its organizational documents, as amended, or result in a breach of any material agreements or contracts to which it is a party.

12.1.6 It has not entered into, and will not during the Term, enter into any agreements or contracts that would conflict with its obligations under this Agreement.

12.1.7 It shall perform under this Agreement and operate its business in material compliance with all Applicable Laws.

12.2 Distributor Representations, Warranties and Covenants. Distributor represents, warrants and covenants to Knight as of the Effective Date and for the Term:

12.2.1 Distributor has the corporate power and authority and the legal right to bind all Affiliates to perform any Distributor obligations (to the extent performed by such Affiliates).

12.2.2 [information redacted]

12.2.3 For the Term of this Agreement, Distributor shall not, and shall cause its Affiliates and Sublicensees not to:

(a) directly or indirectly, manufacture, develop, market, file applications for Regulatory Approval, distribute, sell, or promote in the Territory any pharmaceutical products that (i) are indicated for or marketed for use in the same therapeutic areas as the Product; or (ii) contain the same active pharmaceutical ingredients as the Product;

(b) directly or indirectly research, develop, manufacture, file, sell, market or distribute any other product that contains miltefosine or any product intended for the same therapeutic indication as the Product under the applicable Marketing Authorization (except in connection with a new Product pursuant to an agreement between the Parties pursuant to Section 2.9.2(c));

(c) manufacture, attempt to manufacture, reverse engineer, or analyse the composition of the Product, or cause the Product to be manufactured directly or indirectly by third parties, without the prior written consent of Knight, which consent may be withheld in Knight's sole and absolute discretion; or

(d) actively or passively sell, promote, or solicit orders for the Product, or establish or maintain branches, sales offices, distribution depots, subsidiaries, or deposits for the purpose of the sale of the Product, in any countries outside the Territory, and Distributor shall refer to Knight any inquiries or orders received from customers located outside the Territory and shall not fulfil any such orders without Knight's prior written consent.

12.2.4 Distributor is highly skilled and experienced in providing the services hereunder throughout the Territory, and shall only assign qualified, experienced personnel that shall perform in a professional and workmanlike manner.

12.2.5 Distributor and its Sublicensees (a) are not under investigation by the FDA for debarment or is presently debarred by the FDA pursuant to 21 U.S.C. §335a or its successor provisions, (b) do not have a disqualification hearing pending and has been disqualified by the FDA pursuant to 21 C.F.R. §312.70 or its successor provisions, and (c) are not subject to any pending or threatened action, suit, claim, investigation or legal or administrative proceeding relating to any of the foregoing and, to the best of Distributor's knowledge, there is no basis for any of the foregoing. If, during the Term, Distributor or any of its Sublicensees (i) comes under investigation by the FDA for a debarment action or disqualification, (ii) is debarred or disqualified, or (iii) engages in any conduct or activity that could lead to any of the above-mentioned disqualification or debarment actions, Distributor shall immediately notify Knight of same.

12.2.6 Distributor represents, warrants and covenants that it shall, and shall cause its Affiliates and Sublicensees to, comply at all times during the Term with (a) the Anti-Corruption, Anti-Bribery, Anti-Money Laundering, Anti-Fraud, Anti-Financing of Terrorism and Anti-Financing of Weapons of Mass Destruction Policy attached hereto as Exhibit 6; and (b) the Code of Business Conduct and Ethics attached hereto as Exhibit 7.

12.3 Limitations in Promotion. Distributor represents, warrants and covenants to Knight as of the Effective Date and for the Term, it shall only promote, market, and advertise the Product for indications specifically provided in the Marketing Authorization and in conformity with Applicable Laws and any instructions or guidelines provided by Knight from time to time.

12.4 Knight Representations, Warranties and Covenants. Knight represents, warrants and covenants to Distributor as of the Effective Date that:

12.4.1 Knight Controls the IMPAVIDO® Trademark and shall, during the Term, maintain Control of such IMPAVIDO® Trademark.

12.4.2 (i) Knight has, and will continue during the Term to have, the right to grant to Distributor all the licenses and other rights herein to satisfy the purpose of this Agreement; and (ii) [information redacted], Knight has not granted any license, right or interest in, to or under the IMPAVIDO® Trademark to any Third Party with respect to the Product, in each case with respect to this clause (ii), in any way that would conflict with this Agreement. [information redacted].

12.4.3 Knight Therapeutics (USA) Inc. currently holds the MA and any other necessary regulatory approvals for the Product. The MA is in full force and effect, and Knight Therapeutics (USA) Inc. is in material compliance with the terms of the MA, all associated fees have been satisfied, there are no exceptions to the good standing of the MA, there are no open requests with the FDA known to Knight, there are no outstanding post approval commitments issued by the FDA with respect to the MA or the Product, and no notice has been received by Knight Therapeutics (USA) Inc. from the FDA or any other Regulatory Authority threatening the suspension, revocation, or limitation of the MA.

12.4.4 [information redacted]

12.4.5 [information redacted]

12.4.6 [information redacted]

12.4.7 The Product shall be Manufactured in accordance with the Product Specifications therefor.

12.4.8 Knight has obtained all consents, licenses, authorizations and sublicenses necessary to grant the rights to the Distributor hereunder and such rights will continue to be enforceable during the Term.

12.4.9 To the knowledge of Knight, the Manufacture, sale, or use of the Product in the Territory in accordance with the Marketing Authorization does not infringe upon any Intellectual Property Rights of any Third Party in the Territory.

12.4.10 To the knowledge of Knight, there are no activities being carried out by Third Parties in the Territory that constitute infringement or misappropriation of the IMPAVIDO® Trademark.

12.4.11 To the knowledge of Knight, no application for registration of a Generic Product has been filed in the Territory and Knight is not aware of any Generic Product currently being developed.

12.4.12 [information redacted]

12.4.13 To the extent permitted under the relevant agreement with Knight's Contract Manufacturer(s) and subject to the confidentiality obligations owed by Knight to such Contract Manufacturer(s) and to applicable redactions to protect Third Party confidential information, Knight shall share with Distributor summaries of (or, where permitted, copies of) audit reports relating to Knight's Contract Manufacturer(s) of the Product, in each case to the extent reasonably necessary for Distributor to perform its obligations or exercise its rights under this Agreement, the Pharmacovigilance Agreement, or the Quality Agreement.

12.4.14 During the Term, Knight shall not, and shall cause its Affiliates not to: (a) sell, distribute, or otherwise commercialize the Product or any Generic Product in the Territory, except through Distributor pursuant to this Agreement; or (b) file or submit any application for Regulatory Approval relating to any Generic Product in the Territory.

12.5 Intercompany Arrangements and Affiliate Execution. Knight represents, warrants, and covenants to Distributor that:

12.5.1 Knight acknowledges that certain contracts, agreements, regulatory filings, and other contractual arrangements relating to the Product are owned, held, or entered into by one or more Affiliates of Knight, and that the Marketing Authorization for the Product in the Territory is held by Knight Therapeutics (USA) Inc. on behalf of Knight;

12.5.2 Knight represents and warrants that it has, and shall maintain throughout the Term, all rights, licenses, and authorizations necessary to grant the licenses and rights to Distributor under this Agreement and to perform all of its obligations hereunder;

12.5.3 Knight shall, upon Distributor's reasonable request, provide Distributor with written confirmation that all intercompany agreements necessary to grant the rights and licenses hereunder are in full force and effect, provided that Knight shall not be required to disclose the specific terms of such intercompany agreements except to the extent necessary to demonstrate compliance with this Section; and

12.5.4 Knight may, in its discretion, cause any of its Affiliates to perform any of Knight's obligations under this Agreement, and any act or omission of such Affiliate in connection with such performance shall be deemed the act or omission of Knight for all purposes under this Agreement. Knight shall remain primarily liable to Distributor for the performance of all of Knight's obligations under this Agreement, regardless of whether such obligations are performed by Knight or by any Affiliate of Knight.

12.6 No Other Representations or Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, IS MADE OR GIVEN BY OR ON BEHALF OF EITHER PARTY. ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED, OTHER THAN THE EXPRESS WARRANTIES IN THIS ARTICLE 12.

ARTICLE 13
INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 Indemnification by Knight. Knight shall defend, indemnify, and hold Distributor, its Affiliates and their respective officers, directors, employees, and agents (the "**Distributor Indemnitees**") harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Distributor Indemnitees, all to the extent resulting from claims, suits, proceedings, or causes of action brought by such Third Party (collectively, "**Distributor Indemnification Claims**") to the extent that such Distributor Indemnification Claims arise out of, are based on, or result from (a) any breach of this Agreement by Knight or any of Knight's or its Affiliate's representations, warranties, covenants or obligations under the Agreement; (b) the wilful misconduct, omission, or negligent acts of any member of Knight or its Affiliates, or the officers, directors or employees of the Knight; (c) any material violation of Applicable Law by Knight or its Affiliates occurring during the Term and in connection with Knight's performance of its obligations under this Agreement; or [information redacted], unless such litigation, claim, or proceeding results from Distributor's breach of this Agreement, the Pharmacovigilance Agreement or the Quality Agreement. The foregoing indemnity obligation shall not apply to the extent that the Distributor Indemnitees fail to comply with the indemnification procedures set forth in Section 13.3 and Knight's defence of the relevant Distributor Indemnification Claims is prejudiced by such failure, or to the extent that any Distributor Indemnification Claim arises from, is based on, or results from (x) a material breach of any of Distributor's representations, warranties, or obligations under the Agreement; or (y) the wilful misconduct or negligent acts of any Distributor Indemnitee.

13.2 Indemnification by Distributor. Distributor shall defend, indemnify, and hold Knight, its Affiliates and their respective officers, directors, employees, and agents (the "**Knight Indemnitees**") harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Knight Indemnitees, all to the extent resulting from claims, suits, proceedings, or causes of action brought by such Third Party (collectively, "**Knight Indemnification Claims**") to the extent that such Knight Claims arise out of, are based on, or result from (a) the storage, handling, or Commercialization of the Product by Distributor or its Affiliates, or their respective distributors (the "**Distributor Group**"); (b) any breach of this Agreement by Distributor or of any of Distributor's or its Affiliate's representations, warranties, covenants or obligations under the Agreement; (c) the wilful misconduct, omission or negligent acts of the Distributor or its Affiliates, or the officers, directors, employees, or agents of the Distributor; or (d) any material violation of Applicable Law by any member of the Distributor Group. The foregoing indemnity obligation shall not apply to the extent that the Knight Indemnitees fail to comply with the indemnification procedures set forth in Section 13.3 and Distributor's defense of the relevant Knight Indemnification Claims is prejudiced by such failure, or to the extent that any Knight Indemnification Claim arises from, is based on, or results from (x) a material breach of any of Knight's representations, warranties, or obligations under the Agreement; or (y) the willful misconduct or negligent acts of any Knight Indemnitee.

13.3 Indemnification Procedures. The Party claiming indemnity under this Article 13 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the "**Indemnifying Party**") promptly after learning of a subject Indemnification Claim. Failure to provide such notice which substantially prejudices the Indemnifying Party's ability to defend such Indemnification Claim may invalidate any obligation of indemnification. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, in connection with the defense of the Indemnification Claim. The Indemnified Party may participate in and monitor such defense with counsel of its own choosing at its sole expense; provided, however, that the Indemnifying Party shall have sole case management authority, including the right to assume and conduct the defense with counsel of its choice. Neither Party may compromise or settle any matter without the other Party's prior written consent, not to be unreasonably withheld.

13.4 **Cap on Distributor Indemnification Claims.** Notwithstanding any other provision of this Agreement, the aggregate liability of Knight under this Agreement, the Pharmacovigilance Agreement, the Quality Agreement or Section 13.1 for all Distributor Indemnification Claims and any claims by Distributor shall not exceed the [information redacted]. The Parties acknowledge that the Knight Indemnity Cap represents a fair allocation of risk in light of the Fees payable under this Agreement and the nature of the transactions contemplated hereby.

13.5 [information redacted]

13.6 **Non-Infringement Covenant.** Distributor hereby covenants and agrees that it shall not, directly or indirectly, knowingly or willfully take any action that would infringe, induce the infringement of, or contribute to the infringement of, under any legal theory (including without limitation direct infringement, induced infringement, contributory infringement, or any other theory of patent infringement under Applicable Laws), any patent held by a Third Party that relates to or covers miltefosine, its manufacture, use, sale, offer for sale, or importation into the U.S. Without limiting the generality of the foregoing, Distributor shall ensure that its promotional, marketing, and commercialization activities do not encourage, suggest, or facilitate any use of the Product that would infringe any Third Party patent relating to off-label uses of miltefosine. Distributor shall promptly notify Knight of any Third Party patents or patent applications of which Distributor becomes aware that may be relevant to the Product or its Commercialization in the Territory.

13.7 **General Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), INCIDENTAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO (A) THE AMOUNTS EACH PARTY IS OBLIGATED TO PAY TO A THIRD PARTY AS PART OF A THIRD PARTY CLAIM THAT IS THE SUBJECT OF AN INDEMNIFICATION OBLIGATION HEREUNDER, OR (B) DAMAGES ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILFUL OR INTENTIONAL MISCONDUCT, FRAUD OR BREACH OF THE LICENSE RESTRICTIONS OR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS.

ARTICLE 14
FORCE MAJEURE

14.1 Notice of Force Majeure Event; Excused Performance. The Force Majeure Party shall, within five (5) days of the occurrence of a Force Majeure event, give notice in writing to the other Party specifying the nature and extent of the event of Force Majeure, its anticipated duration and any action being taken to avoid or minimize its effect. Subject to providing such notice and Sections 14.2 and 14.3 below, the Force Majeure Party shall not be liable for delay in performance or for non-performance of its obligations under this Agreement to the extent due to an event of Force Majeure.

14.2 Remediation. The Force Majeure Party shall take all steps as are reasonably necessary to (a) bring the Force Majeure event to a close or (b) find a solution by which the Agreement may be performed despite the continuation of the event of Force Majeure.

14.3 Termination for Prolonged Force Majeure Event. Notwithstanding the other provisions of this Article 14, if the Force Majeure Party is prevented from performing its obligations due to a Force Majeure event for a continuous period in excess of sixty (60) days after the date of the occurrence of the Force Majeure event, such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure event, and the Parties agree that is foreseeable that the Force Majeure event cannot be resolved, the other Party may terminate this Agreement immediately by written notice to the Force Majeure Party, in which case neither Party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination. In the event this Agreement is terminated due to a Force Majeure event pursuant to this Section 14.3, if the Force Majeure event is subsequently resolved, this Agreement shall be reinstated with the same terms and conditions.

ARTICLE 15
TERM AND TERMINATION.

15.1 Term. This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with this Article 15, shall continue until [information redacted] (the "**Initial Term**"). Following the Initial Term, Agreement shall automatically renew for up to [information redacted] successive additional periods of one (1) year each (each, a "**Renewal Term**"), unless Distributor provides written notice to Knight no later than September 30th of the Calendar Year preceding the end of the then-current Term, together with payment of a renewal fee in consideration of Knight's continuing obligation to provide Supply and Manufacturing services of [information redacted] (a "**Renewal Fee**") due March 31st of the year in which the renewal takes effect, provided that Distributor has achieved annual Net Sales exceeding USD [information redacted] in the Calendar Year preceding the end of the then-current Term (the "**Sales Target**"); provided, however, that in the event that the Sales Target has not been achieved in such Calendar Year, Distributor may instead make a payment to Knight (together with the last Additional Transfer Price Payment that would otherwise be due for such Calendar Year in accordance with Section 9.1.4) in an amount equivalent to the difference between (1) the payments that have been made with respect to such Net Sales and (2) the amount that would have been due if such Sales Target had been achieved. Notwithstanding the foregoing, (1) in the event of any supply disruption, other failure to supply, or any regulatory action related to the Product that, in any such instance, directly causes a material reduction in demand for the Product in the Territory, the Sales Target shall not apply to the extent of such reduction, and Distributor's right to renew this Agreement shall be unaffected, provided that there is a reasonable causal link between such event and the reduction in Net Sales, and (2) if a Generic Product enters the market, or in the event of any supply disruption or other failure to supply, the Parties shall negotiate in good faith a revised Sales Target and a revised Renewal Fee. For certainty, this Agreement shall expire automatically upon [information redacted]. The Initial Term, together with any Renewal Term(s), shall constitute the "**Term**" of this Agreement.

15.2 Termination by Distributor. In addition to any other provisions of this Agreement expressly providing for termination of this Agreement, this Agreement may be terminated, by Distributor, [information redacted] and upon written notice to Knight :

15.2.1 upon six (6) months notice, in the event that (a) a Generic Product is registered by any Third Party in the Territory, and (b) in any Calendar Year following commercial launch of that Generic Product in the Territory, Net Sales of the Product in the Territory are reduced by more than 50% of the Net Sales of the Product for the Calendar Year immediately prior to such commercial launch; or

15.2.2 as of January 30 of any Calendar Year, in the event that Net Sales of the Product in the Territory in the immediately preceding Calendar Year were less than [information redacted], other than as a result of a breach by Distributor of any of its obligations under this Agreement; or

15.2.3 [information redacted]

15.3 Termination by Either Party: In addition to any other provisions of this Agreement expressly providing for termination of this Agreement, this Agreement may be terminated, in whole or in part, upon notice to the other Party:

(a) if the other Party is otherwise in material default or breach of this Agreement and such default or breach is not cured within (i) sixty (60) days after written notice thereof is delivered to the defaulting or breaching Party (thirty (30) days in the case of Distributor's failure to pay any amounts due hereunder), or (ii) in the case of a breach that cannot be cured within sixty (60) days, within a reasonable period not exceeding one hundred twenty (120) days after written notice thereof is delivered to the defaulting or breaching Party.

(b) if the other Party ceases to carry on its business as a pharmaceutical company in the ordinary course; or

(c) if the other Party shall file in any court or agency, pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of such other Party or of its assets, or if the other Party proposes a written agreement of composition or extension of its debts, or if the other Party shall be served with an involuntary petition against it, filed in an insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof, or if the other Party shall propose or be a party to any dissolution or liquidation, or if the other Party shall make an assignment for the benefit of its creditors.

15.4 **Effect of Termination.** Without prejudice to any other rights or remedies Knight may have, upon the expiration or termination of this Agreement for any reason, Distributor shall:

15.4.1 immediately pay all undisputed sums which are due and payable to Knight under this Agreement;

15.4.2 immediately cease all use of any property of the Knight unless required for the continuation of any performance permitted hereunder, including any of Knight's Confidential Information; and

15.4.3 be entitled to sell off any inventory of the Product existing on the date such termination is effective for a period of [information redacted] (in either case, the "**Sell-Off Period**"); provided, however, that (i) Distributor shall not, during the [information redacted] preceding the effective date of termination or expiration, order quantities of the Product materially in excess of Distributor's average quarterly orders during the preceding twelve (12) months; (ii) Knight shall have no obligation to supply any Product to Distributor following delivery of notice of termination or during the Sell-Off Period, and any Purchase Orders or Firm Commitments outstanding as of the date of such notice may be cancelled by Knight in its sole discretion without liability; (iii) Distributor shall continue to pay the Additional Transfer Price Payments and other amounts due hereunder with respect to sales during the Sell-Off Period; and (iv) upon expiration of the Sell-Off Period, Distributor shall, at Knight's option, either return any remaining inventory to Knight or destroy such inventory and provide written certification of destruction.

15.5 **Effect of Termination or Expiration.** Upon any termination or expiration of this Agreement, unless otherwise agreed by the Parties, the following shall apply:

15.5.1 All licenses granted to Distributor hereunder shall terminate immediately upon such termination or expiry.

15.5.2 As soon as practicable but in any event no more than ninety (90) days after such termination, Distributor shall, and hereby does, initiate the process to assign to Knight all Regulatory Materials and Regulatory Approvals (including with respect to all Regulatory Materials and all clinical data contained therein) owned or Controlled by Distributor for the Product, provided that, for clarity, Knight shall not exercise any rights under such assignment until such termination date. Distributor shall promptly notify the applicable Regulatory Authorities of such transfer and assignment in the customary manner.

15.5.3 As soon as practicable but in any event no more than ninety (90) days after such termination, Distributor shall transfer to Knight any regulatory, toxicology, manufacturing and QA/QC documents reasonably useful or necessary for Knight to continue Commercialization of the Product in the Territory without unnecessary loss of time or duplication of studies. At Knight's request, Distributor shall request and allow its contractors that have conducted studies or operations with the Product to provide any relevant data or reports to Knight and to continue such operations on behalf of Knight, at Knight's expense. Distributor shall also provide additional reasonable transition services requested by Knight. The transfers and transition services provided under this Article 15 will be at Distributor's cost and expense.

15.5.4 In the event that Distributor has one or more agreements with Third Parties with respect to the Commercialization of the Product, at Knight's request, Distributor shall assign or sublicense its rights under such agreement(s) (solely to the extent such agreements pertain to the Product) to Knight upon any such termination and Knight shall assume all of Distributor's obligations under such agreement(s).

15.6 **Data Rights.** Upon termination of this Agreement by Distributor pursuant to Section 15.2 or by Knight pursuant to Section 15.3, Distributor shall, at Knight's request and at no cost to Knight, provide Knight with copies of all commercialization data, market research, customer lists, sales data, pricing information, and other information and materials generated or collected by Distributor, its Affiliates, or Sublicensees in connection with the Commercialization of the Product. Knight shall have a perpetual, royalty-free, fully paid-up, non-exclusive license to use such information and materials for any purpose, including the continued Commercialization of the Product following termination.

15.7 **Survival.** The following provisions shall survive any expiration or early termination of this Agreement: Article 8, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15, Article 16, Article 17, Article 19 and any other provisions of the Agreement required to give effect to their intent and meaning.

ARTICLE 16
CONFIDENTIALITY

16.1 **Nondisclosure.** Except as otherwise provided in this Agreement, any Confidential Information which is disclosed by or on behalf of one Party to the other in connection with this Agreement shall remain the property of the Disclosing Party and the Receiving Party undertakes:

16.1.1 to use the Confidential Information solely and exclusively for the purposes of this Agreement, and not to use the Confidential Information for any other purpose whatsoever, including the Manufacture, marketing, sale or licensing of any process or product or any other commercial purpose anywhere in the world, unless the Parties specify otherwise; provided, however, that Knight, as Receiving Party, may disclose such Confidential Information as is reasonably necessary to facilitate the transition to a new distributor or Distributor of the Product or the IMPAVIDO® Trademark following the termination or expiration of this Agreement, provided that such new distributor or Distributor has entered into a written confidentiality agreement with obligations no less protective of such Confidential Information than those set forth in this Article 16; and

16.1.2 to maintain the confidentiality of the Confidential Information and not to disclose it directly or indirectly to any other Person, except as otherwise permitted pursuant to this Article 16; and

16.1.3 at the request of the Disclosing Party and/or upon termination of this Agreement, to return, delete or destroy all copies of the Confidential Information, in whatever form it is held, provided that the Receiving Party may retain one (1) copy of the Confidential Information for the sole purpose of determining its obligations under this Agreement but may make no further use of such Confidential Information whatsoever. Notwithstanding the foregoing, Receiving Party may retain Confidential Information on electronic backup systems to which access within the organization of Receiving Party or its Representatives, as the case may be, is limited to purposes of backup and contingency planning. The return, deletion or destruction of any Confidential Information will not relieve Receiving Party of its obligation to maintain the confidentiality of the Confidential Information duly retained by the Receiving Party in accordance with the terms hereof; and

16.1.4 not to copy or reproduce in any form or medium Confidential Information or any part thereof except as may be reasonably necessary for or in connection with the purpose of this Agreement and that any such copies or reproductions shall be the property of the Disclosing Party.

16.2 **Permitted Recipients.** Notwithstanding Section 16.1, the Receiving Party may only disclose the Disclosing Party's Confidential Information to its officers, employees, professional advisors and (with respect to Knight only, Knight's Contract Manufacturers or other subcontractors) on a purely need to know basis to the extent necessary or required for the purposes of carrying out their respective obligations under the Agreement and in order to fulfill the purpose of this Agreement, provided that the Receiving Party shall ensure that, prior to such disclosure, each such Person to whom Confidential Information is to be disclosed is made aware of the obligations contained in this Agreement, and adhere to substantially similar terms as if it were a party to this Agreement.

16.3 **Disclosure Required by Law.** Nothing in Section 16.1 shall preclude disclosure of any Confidential Information required by any governmental, quasi-governmental or regulatory agency or authority or court entitled by law to disclosure of the same, or which is required by law or the rules or requirements of any stock exchange, national securities exchange, or similar securities regulatory body to be disclosed, provided that the Receiving Party promptly notifies the Disclosing Party when such requirement to disclose has arisen to enable the Disclosing Party to seek an appropriate protective order, to make known to the relevant agency, authority, court, stock exchange, or securities regulatory body the proprietary nature of the Confidential Information, and to make any applicable claim of confidentiality. The Receiving Party agrees to co-operate in any action, which the Disclosing Party may decide to take. If the Receiving Party is required to make a disclosure in accordance with this clause, it shall only make a disclosure to the extent to which it is obliged and any such disclosed information shall remain Confidential Information.

16.4 **Exceptions.** The provisions of Section 16.1 shall not apply to any Confidential Information which the Receiving Party can demonstrate, to the reasonable satisfaction of the Disclosing Party based on authenticated written records:

16.4.1 was already in the possession of the Receiving Party or any of its Affiliates and at the Receiving Party's or any of its Affiliates' free use and disposal or in the public domain (through in each case no fault of the Receiving Party or any of its Affiliates or no breach of this Agreement by the Receiving Party) prior to its disclosure by the Disclosing Party under this Agreement as documented by the Receiving Party's written records; or

16.4.2 is purchased or otherwise legally acquired by the Receiving Party or any of its Affiliates at any time from a third Person having and the right to disclose it; or

16.4.3 comes into the public domain, otherwise than through the fault of the Receiving Party or any of its Affiliates; or

16.4.4 is independently generated by the Receiving Party or any of its Affiliates without any recourse or reference to the Confidential Information as documented by the Receiving Party's written records.

16.5 **Termination Survival.** The obligations of each Party in this Article 16 shall survive the termination of this agreement for a period of seven (7) years.

16.6 **Publicity.** Subject to the special authorized disclosure provisions set forth in this Article 16, neither Party shall disclose to any Third Party the nature of their relationship or the terms of this Agreement. If either Party desires to make a public announcement concerning the terms of this Agreement, such Party shall give reasonable prior advance notice of the proposed text of such announcement to the other Party for its prior review and approval (except as otherwise provided herein), such approval not to be unreasonably withheld. A Party commenting on such a proposed press release shall provide its comments, if any, within two (2) Business Days after receiving the press release for review.

16.7 **Permitted Disclosure.** Except as expressly provided in this Article 16, each Party agrees not to disclose any terms of this Agreement to any third party without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed). Each party (the "**Providing Party**") may, however, provide a copy of this Agreement or otherwise disclose its terms in connections with any financing transaction or in connection with any actual or potential bona fide acquisition or sublicense, provided that the person or entity to whom a copy of this Agreement is provided or to whom the terms of this Agreement are disclosed is bound to the Providing Party by reasonable confidentiality obligations, and provided further that the Providing Party is responsible for breaches or confidentiality hereunder by such person or entity to whom a copy of this Agreement is provided or to whom the terms of this Agreement are disclosed. Notwithstanding the foregoing, the Parties may issue a mutually agreed upon press release announcing the execution of this Agreement and describing the relationship of the Parties under the Agreement. In addition, each Party may disclose to third parties the information disclosed in such press release without the need for further approval by the other Party, and Knight may disclose to third parties (via press releases or otherwise) the achievement of any material targets in connection with this Agreement without prior approval by Distributor.

16.8 Filing of Agreement with Regulatory Authority. The Parties acknowledge that each Party (or its Affiliate) may at some point in time be obligated to file a copy of this Agreement with a Regulatory Authority having regulatory authority over the securities of such Party (or such Affiliate) or the exchange thereof. In the event of such request, the Party requested to file the Agreement shall promptly inform the other Party thereof and shall use reasonable efforts to maintain the confidentiality of the other Party's Confidential Information and terms of this Agreement in any such filing or disclosure. Prior to making any such filing of a copy of this Agreement, the Parties shall mutually agree on the provisions of this Agreement for which the Parties shall seek confidential treatment, it being understood that if one Party determines to seek confidential treatment for a provision for which the other Party does not, then the Parties will use reasonable efforts in connection with such filing to seek the confidential treatment of any such provision. The Parties shall cooperate, each at its own expense, in such filing, including without limitation such confidential treatment request, and shall execute all documents reasonably required in connection therewith. The Parties will reasonably cooperate in responding promptly to any comments received from the Requesting Body with respect to such filing in an effort to achieve confidential treatment of such redacted form; provided that a Party shall be relieved of such obligation to seek confidential treatment for a provision requested by the other Party if such treatment is not achieved after the second round of responses to comments from the Requesting Body.

ARTICLE 17
DISPUTE RESOLUTION

17.1 Disputes. The Parties recognize that disputes or issues between the Parties as to certain matters may from time to time arise during the Term concerning either Party's rights and/or obligations under this Agreement. It is the objective of the Parties to establish procedures to facilitate the resolution of issues and disputes arising under this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article 17 to resolve any issue, dispute, controversy or claim arising out of, relating to or in connection with any provision of this Agreement (a "**Dispute**"), if and when any such Dispute arises under this Agreement. For clarity, nothing in this Article 17 shall be construed as a waiver of any Party's rights to pursue any claims, remedies, or relief to which it may be entitled under this Agreement or at law, subject to the dispute resolution procedures set forth herein.

17.2 Arising Between the Parties. With respect to all Disputes arising between the Parties, including any alleged failure to perform, or breach, of this Agreement, or any issue relating to the interpretation or application of this Agreement, representatives of the Parties shall attempt to resolve such Dispute within thirty (30) days after written notice of such Dispute is received by the other Party in writing to the other Party. If the representatives of the Parties are unable to resolve the Dispute within such thirty (30) days, either Party may refer, by written notice, such Dispute to the senior executive officers for each Party for attempted resolution by good faith negotiations within thirty (30) days after such notice is received.

17.3 Binding Arbitration. If the Parties are unable to resolve any dispute under Section 17.2 within the time specified therein, either Party shall have the right to submit the dispute for final and exclusive resolution under the International Chamber of Commerce ("**ICC**") Rules of Arbitration. In the event of any conflict between the ICC Rules of Arbitration and any provision of this Agreement, this Agreement shall govern. Whenever a Party shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other Party. Arbitration shall be held in Wilmington, Delaware conducted in the English language, and shall be governed by the substantive laws of the State of Delaware. The arbitration shall be conducted by a panel of three arbitrators appointed in accordance with ICC rules; provided that each Party shall within thirty (30) days after the institution of the arbitration proceedings appoint an arbitrator, and such arbitrators shall together, within thirty (30) days, select a third arbitrator as the chairman of the arbitration panel, each arbitrator shall have significant experience in the pharmaceutical business. If the two initial arbitrators are unable to select a third arbitrator within such thirty (30) day period, the third arbitrator shall be appointed in accordance with ICC rules. The arbitrators shall render their opinion within thirty (30) days of the final arbitration hearing. Decisions of the panel of arbitrators shall be final and binding on the Parties; provided, that the arbitrators shall have no authority (a) to make decisions with respect to matters with respect to which a Party has final decision making authority, as expressly set forth in this Agreement, (b) to award damages that exceed the scope of the limitations set forth in Section 13.7 above, or (c) to award punitive or exemplary damages. Either Party may apply to any court having competent jurisdiction to enforce the arbitration provisions of this Agreement or an arbitration award as determined pursuant to this Section 17.3. Such court shall have no jurisdiction or ability to resolve disputes beyond the specific foregoing issues.

17.4 Prevailing Party Costs and Fees. The losing Party to the arbitration (if any) as determined by the arbitrators shall reimburse the prevailing Party for it costs and expenses arising from the arbitration, including arbitrator fees, ICC administrative costs, and reasonable attorneys fees.

17.5 Injunctive Relief. Notwithstanding anything to the contrary herein, either Party may seek a preliminary injunction or temporary restraining order in any court of competent jurisdiction in order to prevent any irreparable harm from occurring, including preventing Confidential Information from being disclosed without appropriate authorization under this Agreement. The availability of such injunctive relief shall not constitute a waiver of the obligation to arbitrate Disputes under this Agreement.

17.6 Continued Performance. Provided that this Agreement has not terminated, the Parties shall continue performing their respective obligations under this Agreement pending the final resolution of any Dispute raised under Section 17.1.

17.7 Confidentiality. The existence and status of activities conducted under this Article 17, including any arbitration proceeding or decisions hereunder, shall be deemed Confidential Information of each Party, and shall be subject to Article 16, to the extent applicable in accordance with Applicable Law. Either Party may request that the arbitration tribunal issue appropriate protective orders to safeguard such Party's Confidential Information. Except as required by law, neither Party shall make (or request the arbitration tribunal to make) any public announcement with respect to the proceedings or decision of the arbitration tribunal without prior written consent of the other Party. The existence of any Dispute submitted to arbitration and any decision or award shall be kept in confidence by each Party and the arbitration tribunal, except as required in connection with the enforcement of such award or as otherwise required by Applicable Law.

ARTICLE 18
SCOPE OF COVERAGE

18.1 Scope of Coverage. Distributor shall procure and maintain, at its sole cost and expense, the following insurance coverages with insurers having an A.M. Best rating of A- VII or better:

(a) Commercial General Liability insurance, including contractual liability coverage, with limits of not less than USD $5,000,000 per occurrence and USD $6,000,000 in the annual aggregate, covering bodily injury, property damage, personal injury, and advertising injury;

(b) Product Liability insurance with limits of not less than USD $7,000,000 per occurrence and USD $10,000,000 in the annual aggregate;

(c) Workers' Compensation insurance as required by Applicable Law and Employer's Liability insurance with limits of not less than USD $1,000,000 per accident, per employee for disease, and policy limit for disease; and

(d) Such other insurance as may be required by Applicable Law.

18.2 Provision of Copies. Distributor shall provide Knight with certificates of insurance evidencing the coverages required hereunder upon request and prior to the First Commercial Sale. Failure by Distributor to procure or maintain the required insurance shall constitute a material breach of this Agreement.

18.3 No Reduction of Liability. Distributor's procurement and maintenance of such insurance shall not limit or reduce Distributor's liability or indemnification obligations under this Agreement.

ARTICLE 19
MISCELLANEOUS

19.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, without giving effect to the conflicts of laws provision thereof.

19.2 **Notice Requirements.** Any notice, request, demand, waiver, consent, approval or other communication permitted or required under this Agreement shall be in writing and shall be delivered by electronic messaging, by hand or by internationally recognized overnight delivery service that requires a signature for delivery and maintains records of such delivery, addressed to the Parties at the following addresses specified in this Section 19.2 (or to such other addresses of which notice shall have been given in accordance with this Section 19.1):

If to Knight:

Knight Therapeutics Europe S.A.
70 Route d'Esch
L-1470 Luxembourg
[information redacted]
[information redacted]

With a copy to:

Davies Ward Phillips & Vineberg LLP
1501 McGill College Ave.
Suite 2700
Montreal, Québec H3A 3N9
Canada

[information redacted]
[information redacted]
[information redacted]

If to Distributor:

Eton Pharmaceuticals, Inc
21925 W Field Pkwy #235
Deer Park, IL 60010
Attn: Legal Department
Email: dkrempa@etonpharma.com

With a copy to:

Cooley LLP
One Freedom Square
Reston Town Center, 11951 Freedom Drive
Reston, VA 20190-5656 U.S.A.
Attention: Kenneth J. Krisko
Email: kkrisko@cooley.com

This Section is not intended to govern the day-to-day business communications necessary between the Parties in performing their obligations under the terms of this Agreement.

19.3 **Relationship of the Parties.** The status of a Party under this Agreement shall be that of an independent contractor. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the Parties or, except as otherwise expressly provided in this Agreement, as granting either Party the authority to bind or contract any obligation in the name of or on the account of the other Party or to make any statements, representations, warranties or commitments on behalf of the other Party. All persons employed by a Party shall be employees of such Party and not of the other Party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.

19.4 Assignment.

19.4.1 Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, such consent in its sole discretion, except that: (a) Distributor may make such an assignment without Knight's consent only in the event of a Change of Control of Distributor or to a successor to all or substantially all of Distributor's business and assets (but for clarity, not personnel or other organizational functions generally), whether by merger, sale of stock, sale of assets, or other transaction; and (b) Knight may make such an assignment without Distributor's consent in the event of a Change of Control of Knight, to a successor to all or substantially all of Knight's business or assets, or to a Third Party that acquires all or substantially all of Knight's rights to, or assets relating to, the Product (including by way of divestiture, license, sale, spin-off, or other transfer of the Product, whether by merger, sale of stock, sale of assets, or other transaction. Any permitted assignment shall be binding on the successors of such Party.

19.4.2 Notwithstanding Section 19.4.1, in the event of a Change of Control of Distributor, Distributor shall provide Knight with written notice thereof no later than fifteen (15) days following the earlier of: (i) the public announcement of such Change of Control; or (ii) the signing of a definitive agreement with respect to such Change of Control. Such notice shall include reasonable detail regarding the identity of the acquiring party and the material terms of the proposed transaction.

19.4.3 For the avoidance of doubt, if the acquiring party in a Change of Control of Distributor is, as of the date of such Change of Control, a party that has been debarred or disqualified by the FDA or any other Regulatory Authority, Knight shall have the right to terminate this Agreement immediately upon written notice, without further liability to Distributor.

19.4.4 Whether or not this Agreement is assigned pursuant to Section 19.4, the rights to clinical data, information, materials, Know-How or other intellectual property rights: (i) controlled by a Third Party permitted assignee of a Party or any of its Affiliates that were controlled by such assignee or any of its Affiliates (and not such Party) immediately prior to such assignment (other than as a result of a license or other grant of rights, covenant or assignment by such Party or its Affiliates to, or for the benefit of, such Third Party); or (ii) controlled by any successor-in-interest of a Party as a result of a Change of Control or any Person that becomes an Affiliate of a Party through any Change of Control of such Party, that were controlled by such successor or Person (and not such Party) immediately prior to such Change of Control (other than as a result of a license or other grant of rights, covenant or assignment by such Party or its other Affiliates to, or for the benefit of, such Person), in each case ((i) and (ii)), shall be automatically excluded from the rights licensed or granted to the other Party under this Agreement.

19.4.5 Any assignment or attempted assignment by either Party in violation of the terms of this Section 19.4 shall be null, void and of no legal effect.

19.5 Expenses. Except as otherwise expressly provided in this Agreement, each Party shall pay the fees and expenses of its respective lawyers and all other expenses and costs incurred by such Party incidental to the negotiation, preparation, execution and delivery of this Agreement.

19.6 Waiver and Non-Exclusion of Remedies. A Party's failure to enforce, at any time or for any period of time, any provision of this Agreement, or to exercise any right or remedy shall not constitute a waiver of that provision, right or remedy or prevent such Party from enforcing any or all provisions of this Agreement and exercising any rights or remedies. To be effective any waiver must be in writing and signed by the waiving Party. All rights and remedies are cumulative and do not exclude any other right or remedy provided by law or otherwise available. The acceptance by Knight of any payment by Distributor hereunder shall not operate as any waiver by Knight of any right, power or remedy provided by law or under this Agreement.

19.7 Severability. To the fullest extent permitted by Applicable Law, the Parties waive any provision of law that would render any provision in this Agreement invalid, illegal or unenforceable in any respect. If any provision of this Agreement is held to be invalid, illegal or unenforceable, in any respect, then such provision shall be given no effect by the Parties and shall not form part of this Agreement. To the fullest extent permitted by Applicable Law and if the rights or obligations of any Party shall not be materially and adversely affected, all other provisions of this Agreement shall remain in full force and effect and the Parties shall use their best efforts to negotiate a provision in replacement of the provision held invalid, illegal or unenforceable that is consistent with Applicable Law and achieves, as nearly as possible, the original intention of the Parties.

19.8 Entirety. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement. This Agreement supersedes all prior agreements, whether written or oral, with respect to the subject matter of the Agreement. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of both Parties.

19.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together shall be deemed to constitute one and the same instrument.

[Signature page follows.]

This Agreement is executed by the authorized representatives of the Parties as of the date first written above.

KNIGHT THERAPEUTICS EUROPE S.A.

by ______________________________

[information redacted]
[information redacted]

by ______________________________

[information redacted]
[information redacted]

ETON PHARMACEUTICALS, INC.

by ______________________________

[information redacted]
[information redacted]

Exhibit 10.3

ETON PHARMACEUTICALS, INC.
21925 W. Field Parkway, Suite 235
Deer Park, IL 60010-7278

March 31, 2026 (amended June 1, 2026 for change in severance provision)

Judith Matthews

Re: **<u>Employment Terms</u>**

Dear Judith:

On behalf of Eton Pharmaceuticals, Inc. (the "**Company**"), I am pleased to offer you employment in the position of Executive Vice President, Finance, of the Company, on the terms set forth in this offer letter agreement (the "**Agreement**"). The Company and the Board of Directors (the "Board") have identified you as the designated successor to the role of Chief Financial Officer as part of the Company's executive leadership succession planning. It is the Company's current expectation that you will be appointed to serve as Chief Financial Officer by June 1st, 2026.

1. Employment Position; Duties. As the Executive Vice President, Finance of the Company, you will report to the Chief Executive Officer and you will have those duties and responsibilities as customary for this position and as may be directed by the Chief Executive Officer of the Company. Your work duties may include work for, or on behalf of, Affiliates of the Company (as defined below). You will primarily work from Deer Park, IL office. During your employment, you will devote your full-time best efforts to the business of the Company and its Affiliates. Your commencement of employment pursuant to this Agreement will start on or around April 13, 2026 (such actual date of your commencement of employment, the "**Start Date**").

2. Employee Base Salary; Employee Benefits, PTO and Business Expenses.

(a) Base Salary. Your base salary will be paid at the annual rate of $440,000.00, less required payroll deductions and tax withholdings, paid on the Company's normal payroll schedule (bi-monthly). As an exempt salaried employee, you will be required to work the Company's normal business hours, and such additional time as necessary and appropriate for your work assignments and position. You will not be eligible for extra payment under the overtime laws. Your base salary may otherwise be adjusted from time to time at the Company's discretion.

(b) Employee Benefits. As a regular full-time employee, you will be eligible to participate in the Company's standard employee benefits (pursuant to the terms and conditions of the benefit plans and applicable policies), as they may be terminated or changed from time to time within the Company's discretion.

(c) Personal time off / Holiday pay. You will be entitled to accrue fourteen (14) personal time off (PTO) days, two (2) sick days and two (2) personal days for the calendar year ending December 31, 2026 and then twenty (20) PTO days, three (3) sick days and three (3) personal days for each subsequent calendar year. Your calendar year PTO accrues ratably during each month of your employment with the Company. In addition, the Company has nine (9) paid holidays per year and you will be entitled to pay for each holiday during your term of employment.

(d) Business Expenses. Your legitimate and documented business expenses will be reimbursed by the Company as provided under its business expense reimbursement policies.

3. Annual Performance Bonus. In addition to base salary, you will be eligible to earn discretionary incentive compensation at a total annual target amount of forty-five percent (45%) of your base salary in effect during the bonus year ("**Performance Bonus**"), based on the achievement of corporate and/or individual performance targets to be determined and approved by the Board of Directors (the "**Board**") or the Compensation Committee of the Board (the "**Compensation Committee**"). The Performance Bonus, if earned, will be paid on an annual basis, less required payroll deductions and tax withholdings, after the close of the fiscal year and after determination by the Board (or the Compensation Committee thereof) of the level of achievement of the applicable performance targets and metrics and the level of the Performance Bonus amount (if any). No Performance Bonus amount is guaranteed and, in addition to the other conditions for earning such Performance Bonus, you must remain an employee in good standing of the Company on the Performance Bonus payment date in order to earn any Performance Bonus. You will be eligible for a Performance Bonus for the initial year of your employment with the Company, pro-rated based on when your Start Date occurs.

4. Equity Award. Following your commencement of employment with the Company, you will be granted an option under the Company's 2018 Equity Incentive Plan (the "**Plan**") to purchase 37,000 shares of common stock of the Company (the "**Option**"). The Option shall vest with respect to 25% of the shares underlying the Option on the one-year anniversary of your Start Date, and in equal yearly installments thereafter, subject to your continued services to the Company. The Option shall be subject to approval by the Board (or authorized committee thereof) and to the terms and conditions of the Plan, stock option grant notice and option agreement to be entered into between you and the Company. The Option shall have an exercise price per share equal to the fair market value of the Company's common stock on the grant date of the Option, as determined by the Board (or authorized committee thereof) in its sole, good faith discretion.

5. Compliance With Confidential Information Agreement and Company Policies. As a condition of employment, you shall sign and comply with the Company's form of Proprietary Information, Inventions, and Non-Solicitation Agreement (or similarly termed agreement) (the "**Confidential Information Agreement**") which will be provided by the Company. You will have fourteen (14) days to review and execute the Confidential Information Agreement, and we recommend you have that agreement reviewed by counsel of your choice. In addition, you are required to abide by the Company's policies and procedures, as may be modified from time to time within the Company's discretion.

6. Protection of Third Party Information and Outside Activities.

(a) Third Party Information. In your work for the Company or its Affiliates, you will be expected not to make any unauthorized use or disclosure of any confidential information or materials, including trade secrets, of any former employer or other third party; and not to violate any lawful agreement that you may have with any third party. By signing this Agreement, you represent that you are able to perform your job duties within these guidelines, and you are not in unauthorized possession or control of any confidential documents, information, or other property of any former employer or third party. In addition, you represent that you have disclosed to the Company in writing any agreement you may have with any third party (e.g., a former employer) which may limit your ability to perform your duties to the Company or its Affiliates, or which could present a conflict of interest with the Company or its Affiliates, including but not limited to disclosure (and a copy) of any contractual restrictions on solicitations or competitive activities, and are not bound by any such restrictions which would restrict or prevent you from accepting employment with the Company.

(b) Outside Activities. During your employment with the Company, you may engage in civic and not-for-profit activities, act as a trustee for estate planning purposes and engage in, and manage, personal investments, so long as such activities do not interfere with the performance of your duties hereunder or present a conflict of interest with the Company or its Affiliates. Subject to the restrictions set forth herein, and only with prior written disclosure to and consent of the Board, you may engage in other types of business or public activities. Your service on any board of directors (or similar) of an outside entity or organization shall be subject to prior written approval of the Board (or an authorized committee thereof). The Board may rescind approval of outside services, if the Board determines, in its sole discretion, that such activities compromise or threaten to compromise the Company's or its Affiliates' business interests or conflict with your duties to the Company or its Affiliates.

(c) Duty of Loyalty. During your employment with the Company, you will not, without the express written consent of the Board, directly or indirectly serve as an officer, director, stockholder, employee, partner, proprietor, investor, joint venturer, associate, representative or consultant of any person or entity engaged in, or planning or preparing to engage in, business activity competitive with any line of business engaged in (or, to your knowledge, immediately planned to be engaged in) by the Company or its Affiliates; provided, however, that you may purchase or otherwise acquire up to (but not more than) five percent (5%) of any class of securities of any enterprise (without participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange. In addition, you will be subject to certain restrictions (including restrictions continuing after your employment ends) under the terms of your Confidential Information Agreement.

7. At-Will Employment Relationship. Your employment relationship with the Company is at-will. Accordingly, you may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company, and the Company may terminate your employment at any time with or without Cause or prior notice. In addition, the Company retains the discretion to modify your other employment terms from time to time, including but not limited to your position, duties, authority, reporting relationship, work location, compensation, and benefits.

Your offer and employment is contingent upon:

- Signing and abiding by the Company's Confidentiality Agreement, and the Proprietary Information and Inventions Assignment Agreement.
- Successful completion of a routine background check by an outside agency engaged by Eton.
- Acceptance of other Company policies and procedures, including, but not limited to, our Employee Manual, Code of Business Conduct and Ethics, and Insider Trading Policy.

You must also establish your identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA). You will be required to complete the Employment Verification Form (I-9) and provide original documentation on your first day of work

8. Severance Benefits.

(a) Severance Benefits for Covered Termination. If, beginning on or after the six (6) month anniversary of your Start Date, (A) your employment is terminated due to (1) a termination by the Company without Cause (other than as a result of your death or Disability) or (2) your resignation for Good Reason (collectively, a "**Covered Termination**"), (B) you satisfy the Release Requirement and (C) you continue to abide by the terms of your Confidential Information Agreement and the provisions of this Agreement that survive your termination, which includes non-competition provisions set forth therein (the requirements set forth in (B) and (C), the "**Severance Requirements**"), then you will receive the "**Severance Benefits**" as set forth in this Section 8(a) as your sole severance benefits, and you will not be eligible for severance benefits under any other policy, plan or agreement except to the extent required by law. Specifically, you will receive:

(i) Severance Payments. Severance pay in the form of continuation of your base salary at the time of your Covered Termination (but ignoring any decrease that forms the basis of your resignation for Good Reason, if applicable) for a period of six (6) months, subject to required payroll deductions and tax withholdings (the "**Severance Payments**"). Subject to Section 9, the Severance Payments shall be made on the Company's regular payroll schedule in effect following your termination date, provided, however, that any such payments that are otherwise scheduled to be made prior to the Release Effective Date (as defined below) shall instead accrue and be made on the first regular payroll date following the Release Effective Date; and

(ii) Health Care Continuation Coverage Payments.

(A) COBRA Premiums. If you timely elect continued coverage under COBRA, the Company will pay your COBRA premiums to continue your coverage (including coverage for your eligible dependents, if applicable) ("**COBRA Premiums**") through the period starting on the termination date and ending six (6) months after the termination date (the "**COBRA Premium Period**"); provided, however, that the Company's provision of such COBRA Premium benefits will immediately cease if during the COBRA Premium Period you become eligible for group health insurance coverage through a new employer or you cease to be eligible for COBRA continuation coverage for any reason, including plan termination. In the event you become covered under another employer's group health plan or otherwise cease to be eligible for COBRA during the COBRA Premium Period, you must immediately notify the Company of such event. For purposes of this Section, references to COBRA premiums shall not include any amounts payable you under a Section 125 health care reimbursement plan under the Internal Revenue Code of 1986, as amended (the "**Code**").

(B) **Special Cash Payments in Lieu of COBRA Premiums**. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot pay the COBRA Premiums without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), regardless of whether you or your dependents elect or are eligible for COBRA coverage, the Company instead shall pay to you, on the first day of each calendar month following the time the Company determines it cannot pay such COBRA Premiums, a fully taxable cash payment equal to the applicable COBRA premiums for that month (including the amount of COBRA premiums for your eligible dependents), subject to applicable tax withholdings (such amount, the "**Special Cash Payment**"), for the remainder of the COBRA Premium Period. You may, but are not obligated to, use such Special Cash Payments toward the cost of COBRA premiums.

(b) Severance Benefits for Covered Termination during Change in Control Period. Notwithstanding the foregoing, if your Covered Termination occurs during the period commencing one (1) month prior to the Closing of a Change in Control and ending twelve (12) months following the Closing of a Change in Control, in addition to the Severance Benefits described in Section 8(a)(ii), you shall also be eligible to receive the following, subject to satisfaction of the Severance Requirements:

(i) Equity Acceleration. The vesting and exercisability of each outstanding unvested stock option and other stock award, as applicable, that you hold covering Company common stock (each, an "**Equity Award**") shall be accelerated in full and any reacquisition or repurchase rights held by the Company in respect of common stock issued pursuant to any Equity Award granted to you shall lapse in full. For purposes of determining the number of shares that will vest pursuant to the foregoing provision with respect to any Equity Award that vests based on performance goals for which the performance period has not ended and that has multiple vesting levels depending upon the level of performance, vesting acceleration with respect to any ongoing performance period(s) shall occur with respect to the number of shares subject to the award as if the applicable performance criteria had been attained at a 100% level or, if greater, based on actual performance as of your Covered Termination. If necessary to give effect to this Section 8(b)(i), if your Covered Termination occurs prior to a Change in Control, all of the Equity Awards you hold as of immediately prior to your Covered Termination shall remain outstanding after your Covered Termination for at least until the earlier of (i) thirty (30) days after your Covered Termination or (ii) the Closing, if sooner. Notwithstanding anything to the contrary set forth herein, your Equity Awards shall remain subject to the terms of the applicable Company plan and award documents under which such Equity Award was granted, including any provision for earlier termination of such Equity Awards.

(ii) **Change in Control Severance Payments**. Change in Control Severance pay in the form of (i) continuation of your base salary at the time of your Covered Termination (but ignoring any decrease that forms the basis of your resignation for Good Reason, if applicable) for a period of fifteen (15) months, subject to required payroll deductions and tax withholdings and (ii) payment of 1.25 times your targeted Performance Bonus prorated to the month of your termination of employment or resignation (collectively, the "**Change in Control Severance Payments**"). Subject to Section 9, the Change in Control Severance Payments shall be made on the Company's regular payroll schedule in effect following your termination date, provided, however, that any such payments that are otherwise scheduled to be made prior to the Release Effective Date (as defined below) shall instead accrue and be made on the first regular payroll date following the Release Effective Date.

(c) Release Requirement. To be eligible for the Severance Benefits pursuant to Sections 8(a) and 8(b) above, you must satisfy the following release requirement (the "**Release Requirement**"): return to the Company a signed and dated general release of all known and unknown claims, in such form as provided by the Company (the "**Release and Waiver**") within the applicable deadline set forth therein, and permit the Release and Waiver to become effective and irrevocable in accordance with its terms, which must occur no later than sixty (45) days following your termination date (such effective date of the Release and Waiver, the "**Release Effective Date**"). You may be asked to provide reasonable transitional services as a condition of payment of Severance Benefits.

(d) Definitions.

(i) "**Affiliate**" means, at the time of determination, any "parent" or "majority-owned subsidiary" of the Company, as such terms are defined in Rule 405 promulgated under the Securities Act of 1933, as amended. The Board will have the authority to determine the time or times at which "parent" or "majority-owned subsidiary" status is determined within the foregoing definition.

(ii) "**Cause**" means the occurrence of any one or more of the following: (i) your conviction of, or plea of no contest with respect to, any felony, or of any misdemeanor involving dishonesty or moral turpitude; (ii) your participation in a fraud or act of dishonesty (or an attempted fraud or act of dishonesty) that results in (or could result in) material harm to the Company or its Affiliates, including but not limited to material harm to reputational interests; (iii) your violation of a fiduciary duty owed to the Company or its Affiliates; (iv) your material breach of any fully executed agreement between you and the Company or any of its Affiliates, including but not limited to this Agreement or your Confidential Information Agreement, or any applicable Company policies; (v) persistent, unsatisfactory performance or neglect of your job duties, which is not cured within ten (10) business days after you are provided written notice by the Company specifically identifying the manner of your performance or neglect (*provided, that,* such written notice and opportunity to cure are not required if your performance or neglect is not reasonably susceptible to being cured); (vi) your gross misconduct or material failure to comply with a written instruction of the Company; or (vii) your inability to perform your job duties for any consecutive thirty (30) day period for any reason that is not the result of death or Disability.

(iii) "**Change in Control**" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(A) any Exchange Act Person[1] (excluding Imprimis Pharmaceuticals, Inc. and any of its Affiliates ("**Imprimis**")) becomes the Owner[2], directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (C) solely because the level of Ownership held by any Exchange Act Person (the "**Subject Person**") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

(B) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

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[1] "**Exchange Act Person**" means any natural person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities. "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

[2] "**Own**," "**Owned**," "**Owner**," "**Ownership**" A person or entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(C) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company will otherwise occur, except for a liquidation into a parent corporation; or

(D) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to Imprimis or to an entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition.

Notwithstanding the foregoing definition or any other provision of this Agreement, the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

(iv) "**Closing**" means the initial closing of the Change in Control as defined in the definitive agreement executed in connection with the Change in Control. In the case of a series of transactions constituting a Change in Control, "Closing" means the first closing that satisfies the threshold of the definition for a Change in Control.

(v) "**Disability**" means your inability to perform the essential functions of your position, with or without reasonable accommodation, by reason of any medically determinable physical or mental impairment, where such inability has continued for at least a period of 60 days in any consecutive 365 day period, as determined by the Company in its sole discretion.

(vi) "**Good Reason**" for your resignation means the occurrence of any of the following events, conditions or actions taken by the Company without Cause and without your written consent: (i) a material reduction of your annual base salary; *provided, however*, that Good Reason shall not be deemed to have occurred in the event of a reduction in your annual base salary that is pursuant to a salary reduction program affecting substantially all of the executive employees of the Company; (ii) a material reduction in your authority, duties or responsibilities; (iii) a relocation of your principal place of employment with the Company to a place that increases your one-way commute by more than fifty (50) miles as compared to your then-current principal place of employment immediately prior to such relocation (excluding regular travel in the ordinary course of business); or (iv) a material breach by the Company of any provision of this Agreement; *provided, however*, that in each case above, in order for your resignation to be deemed to have been for Good Reason, you must first give the Board written notice of the action or omission giving rise to "Good Reason" within thirty (30) days after the first occurrence thereof; the Company must fail to reasonably cure such action or omission within thirty (30) days after receipt of such notice (the "**Cure Period**"), and your resignation from all positions you hold with the Company must be effective not later than thirty (30) days after the expiration of such Cure Period.

(vii) "**Subsidiary**" means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(e) Other. You will not be eligible for any Severance Benefits under any circumstances other than those described herein, including circumstances in which your employment is terminated by the Company for Cause, you terminate your employment for any reason at any time, or your employment terminates due to your death or Disability. In addition, if you materially breach any continuing obligations to the Company (including but not limited to any material breach of the Confidential Information Agreement and the Non-Competition terms set forth in Section 11) during the period of time that you are receiving any Severance Benefits, you will forfeit your entitlement to any then unpaid Severance Benefits, and the Company's obligation to continue to pay or provide such Severance Benefits will immediately terminate as of the date of your material breach.

9. Section 409A. It is intended that all of the benefits and other payments payable under this Agreement satisfy, to the greatest extent possible, an exemption from the application of Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect (collectively "**Section 409A**"), and this Agreement will be construed to the greatest extent possible as consistent with those provisions, and to the extent no so exempt, this Agreement (and any definitions hereunder) will be construed in a manner that complies with Section 409A, and any ambiguities herein shall be interpreted accordingly. Specifically, the benefits under this Agreement are intended to satisfy the exemptions from application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9) and each installment of severance benefits, if any, is a separate "payment" for purposes of Treasury Regulations Section 1.409A-2(b)(2)(i). However, if such exemptions are not available and you are, upon your "separation from service" with the Company (within the meaning of Treasury Regulation Section 1.409A-1(h) (without regard to any permissible alternative definition thereunder) ("**Separation from Service**"), a "specified employee" for purposes of Section 409A, then, solely to the extent necessary to avoid adverse personal tax consequences under Section 409A, the timing of the severance benefits payments shall be delayed until the earlier of (i) six (6) months and one (1) day after your Separation from Service, or (ii) your death. Severance benefits shall not commence until you have a Separation from Service. If the severance benefits are not covered by one or more exemptions from the application of Section 409A and the Release and Waiver could become effective in the calendar year following the calendar year in which your Separation from Service occurs, the Release Effective Date will not be deemed effective, for purposes of payment of severance, any earlier than the first day of the second calendar year. Except to the minimum extent that payments must be delayed because you are a "specified employee" or until the Release Effective Date, all severance amounts will be paid as soon as practicable in accordance with this Agreement and the Company's normal payroll practices.

10. Section 280G.

(a) If any payment or benefit you would receive from the Company or otherwise in connection with a change in control of the Company or other similar transaction ("**Payment**") would (1) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (2) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment will be equal to the Reduced Amount. The "**Reduced Amount**" will be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount ((x) or (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction will occur in the manner (the "**Reduction Method**") that results in the greatest economic benefit for you. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the "**Pro Rata Reduction Method**").

(b) Notwithstanding the foregoing, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for you as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (e.g., being terminated without cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are "deferred compensation" within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

(c) The independent registered public accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the event described in Section 280G(b)(2)(A)(i) of the Code will perform the foregoing calculations. If the independent registered public accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the change in control or similar transaction, the Company will appoint a nationally recognized independent registered public accounting firm to make the determinations required hereunder. The Company will bear all expenses with respect to the determinations by such independent registered public accounting firm required to be made hereunder. The independent registered public accounting firm engaged to make the determinations hereunder will make its determination with input from you (or your counsel) and provide its calculations, together with detailed supporting documentation, to the Company and you within fifteen (15) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) or such other time as reasonably requested by the Company or you.

11. Dispute Resolution. To ensure the rapid and economical resolution of disputes that may arise in connection with your employment with and services for the Company, you and the Company agree that any and all disputes, claims, or causes of action, in law or equity, including but not limited to statutory claims, arising from or relating to the enforcement, breach, performance, or interpretation of this Agreement, your employment with and services for the Company, or the termination of your employment with and services for the Company, will be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. §§1-16, and to the fullest extent permitted by law, by final, binding and confidential arbitration conducted in Chicago, Illinois (or such other location as mutually agreed by the parties) by JAMS, Inc. ("**JAMS**") or its successors by a single arbitrator. ***Both you and the Company acknowledge that by agreeing to this arbitration procedure, you each waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding***. Any such arbitration proceeding will be governed by JAMS' then applicable rules and procedures for employment disputes, which will be provided to you upon request. In any such proceeding, the arbitrator shall (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (b) issue a written arbitration decision including the arbitrator's essential findings and conclusions and a statement of the award. You and the Company each shall be entitled to all rights and remedies that either would be entitled to pursue in a court of law. Nothing in this Agreement is intended to prevent either the Company or you from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration pursuant to applicable law. The Company shall pay all filing fees in excess of those that would be required if the dispute were decided in a court of law, and shall pay the arbitrator's fees and any other fees or costs unique to arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

12. Indemnification. Upon your Start Date, you shall be eligible for indemnification by the Company in your role as Chief Financial Officer to the fullest extent as provided for pursuant to Section 8.1 of the Company's By-Laws, as may be amended and restated from time to time.

13. Miscellaneous. This Agreement, along with the Confidential Information Agreement, forms the complete and exclusive statement of your agreement with the Company regarding the subject matter hereof. It supersedes and replaces any other agreements or promises made to you by anyone concerning your employment terms with the Company or any Affiliate thereof, whether oral or written. This Agreement may not be amended or modified except by a written modification signed by you and a duly authorized member of the Board, with the exception of those changes expressly reserved to the Company's discretion in this Agreement. This Agreement is governed by the laws of the state of Illinois without reference to conflicts of law principles, and it is intended to bind and inure to the benefit of and be enforceable by the Company and its successors and assigns. If any provision of this Agreement shall be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and such provision will be reformed, construed and enforced so as to render it valid and enforceable consistent with the general intent of the parties insofar as possible under applicable law. With respect to the enforcement of this Agreement, no waiver of any right hereunder shall be effective unless it is in writing. Any ambiguity in this Agreement shall not be construed against either party as the drafter. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile and electronic signatures shall be equivalent to original signatures. To the extent required by law, your employment with the Company will be subject to satisfactory proof of your identity and right to work in the United States.

To accept our offer of employment under the terms set forth herein, please sign and date this Agreement and return the fully signed documents to me at your earliest convenience and no later than within fifteen business days from the date listed above.

Please let me know if you have any questions.

Sincerely,
ETON PHARMACEUTICALS, INC.

Electronically signed by: Sean Brynjelsen
Reason: I am the approver
Date: Jun 3, 2026 10:58:53 EDT

By: ______________________________

Sean Brynjelsen

Reviewed, Understood, and Accepted:

Electronically signed by: Judith Matthews
Reason: I am the approver
Judith Matthews Date: Jun 3, 2026 10:57:21 CDT

Judith Matthews	06/03/2026 Date

Accepted by Company:

Electronically signed by: Sean Brynjelsen
Reason: I am the approver
Date: Jun 3, 2026 12:24:13 EDT

Sean Brynjelsen, Chief Executive Officer	06/03/2026 Date

Eton Pharma - Offer Letter_Judith Matthews Amended 06-01-2026

Final Audit Report 2026-06-03

Created:	2026-06-01
By:	Samantha Dixon (sdixon@etonpharma.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4amU1dIE9lsDfFxPCTkBpw8cXbFTu6A2

"Eton Pharma - Offer Letter_Judith Matthews Amended 06-01-2026" History

Document created by Samantha Dixon (sdixon@etonpharma.com)
2026-06-01 - 3:29:52 PM GMT

Document emailed to Sean Brynjelsen (sbrynjelsen@etonpharma.com) for signature
2026-06-01 - 3:34:07 PM GMT

Email viewed by Sean Brynjelsen (sbrynjelsen@etonpharma.com)
2026-06-03 - 2:55:13 PM GMT

Sean Brynjelsen (sbrynjelsen@etonpharma.com) authenticated with Adobe Acrobat Sign.
Challenge: The user completed the signing ceremony.
2026-06-03 - 2:56:45 PM GMT

Sean Brynjelsen (sbrynjelsen@etonpharma.com) authenticated with Adobe Acrobat Sign.
Challenge: The user completed the signing ceremony.
2026-06-03 - 2:58:52 PM GMT

Document e-signed by Sean Brynjelsen (sbrynjelsen@etonpharma.com)
Signing reason: I am the approver
Signature Date: 2026-06-03 - 2:58:53 PM GMT - Time Source: server - Signature Appearance Selected: DRAW

Agreement completed.
2026-06-03 - 2:58:53 PM GMT

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Sean E. Brynjelsen, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Eton Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer 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.

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: August 13, 2026

By: */s/ Sean E. Brynjelsen*
Sean E. Brynjelsen
Principal Executive Officer

Exhibit 31.2

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Judith M. Matthews, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Eton Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer 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.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2026

By: */s/ Judith M. Matthews*
Judith M. Matthews
Principal Financial and Accounting Officer

Exhibit 32.1

ETON PHARMACEUTICALS, INC.
PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Sean E. Brynjelsen, President and Chief Executive Officer of Eton Pharmaceuticals, Inc. (the “Company”), and Judith M. Matthews, Chief Financial Officer of the Company, each hereby certifies that, to the best of their knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the period ended June 30, 2026, to which this Certification is attached as Exhibit 32.1 (the “Periodic Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the 13 day of August, 2026.

/s/ Sean E. Brynjelsen	*/s/ Judith M. Matthews*
Sean E. Brynjelsen	Judith M. Matthews
President and Chief Executive Officer	Chief Financial Officer
(*Principal Executive Officer*)	(*Principal Financial and Accounting Officer*)

* This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.