IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (MFW)
Debtor.	Related Docket Nos. 11, 42

Final Hearing Date: June 3, 2025 at 2:00 p.m. (ET)
Objection Deadline: May 27, 2025 at 4:00 p.m. (ET)

NOTICE OF ENTRY OF INTERIM ORDER AND FINAL HEARING REGARDING MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on May 6, 2025, the above-captioned debtor and debtor in possession (the "Debtor"), filed the *Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Post-Petition Secured Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Motion") [Docket No. 11] with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). A copy of the Motion is attached hereto as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that the Debtor presented the Motion at a hearing before the Honorable Mary F. Walrath at the Bankruptcy Court on May 8, 2025. The Bankruptcy Court granted the relief requested by the Motion on an interim basis and entered the *Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Secured Financing, (II)*

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "Interim Order") [Docket No. 42], attached hereto as **Exhibit 2**.

PLEASE TAKE FURTHER NOTICE that any response or objection to the entry of a final order with respect to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **May 27, 2025 at 4:00 p.m. prevailing Eastern Time**.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) the Debtor, Synthego Corporation, 3696 Haven Avenue, Suite A, Redwood City, California, 94063; (ii) proposed counsel to the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, Delaware, 19801, Attn: Debra I. Grassgreen (dgrassgreen@pszjlaw.com), Maxim B. Litvak (mlitvak@pszjlaw.com), Malhar S. Pagay (mpagay@pszjlaw.com), and James E. O'Neill (joneill@pszjlaw.com); (iii) the United States Trustee for the District of Delaware, 844 N. King Street, Room 2207, Wilmington, Delaware, 19801, Attn: Jonathan W. Lipshie (Jon.Lipshie@usdoj.gov), Megan Seliber (megan.seliber@usdoj.gov); (iv) counsel to the Prepetition Secured Parties and the DIP Secured Parties, (a) Morrison & Foerster LLP, 250 West 55th Street, Floor 20, New York, New York, 10019, Attn: James A. Newton, Esq. (jnewton@mofo.com) and Miranda K. Russell, Esq. (mrussell@mofo.com), and (b) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware, 19801, Attn: Christopher M. Samis (csamis@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com); (v) counsel to any official committee of

unsecured creditors appointed in the Chapter 11 Case; and (vi) any party that has requested notice pursuant to Bankruptcy Rule 2002 or Local Rule 2002-(b).

PLEASE TAKE FURTHER NOTICE that copies of the First Day Motions can be obtained for a fee through the Court's website at www.deb.uscourts.gov, referencing Case No. 25-10823 (MFW), or may be obtained for free by accessing the Debtor's restructuring website at https://dm.epiq11.com/case/synthego/info.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE FINAL RELIEF SOUGHT IN THE MOTION WILL BE HELD ON **JUNE 3, 2025 AT 2:00 P.M. PREVAILING EASTERN TIME** BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 4. THE HEARING WILL BE CONDUCTED BY ZOOM. PARTIES AND WITNESSES ARE PERMITTED, BUT NOT REQUIRED, TO ATTEND IN PERSON.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 9, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen, (admitted *pro hac vice*)
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Proposed Counsel to the
Debtor and Debtor in Possession

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (___)
Debtor.	

MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the "Debtor") files this *Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Post-Petition Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; (VI) Scheduling Final Hearing; and (VII) Granting Related Relief* (this "Motion"). In support of this Motion, the Debtor relies upon and refers this Court to the *Declaration of Craig Christianson in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the "Christianson First Day Declaration") and the *Declaration of Allen Soong in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the "Soong First Day Declaration" and, together with the Christianson First Day Declaration, the "First Day Declarations"), incorporated herein by reference.[2] In further support of the Motion, the Debtor respectfully represents as follows:

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

[2] A capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declarations.

I. SUMMARY OF RELIEF REQUESTED

1. Pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"); Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and Rules 2002-1(b), 4001-2, 9006-1, and 9013-1 of the Local Bankruptcy Rules for the District of Delaware (the "Local Rules"), the Debtor seeks entry of interim and final orders, substantially in the form of the interim order attached hereto as **Exhibit 1** and a final order to be submitted at a later date (respectively, the "Interim Order" and "Final Order" and collectively, the "DIP Orders"), authorizing the Debtor to, among other things:

(i) Obtain senior secured, superpriority, debtor-in-possession financing in the aggregate principal amount of up to $50,000,000 (the "DIP Facility") pursuant to the terms and conditions of the DIP Credit Documents (as defined below), the Interim Order, and the Final Order (as defined below);

(ii) Enter into and perform under the (a) Senior Secured Debtor-In-Possession Term Loan Credit Agreement (the "DIP Credit Agreement"), substantially in the form attached as Exhibit A to the proposed Interim Order, by and among Synthego Corporation, as borrower, Perceptive Credit Holdings III, LP and each other lender from time to time party thereto (in such capacities, the "DIP Lenders"),[3] and Perceptive Credit Holdings III, LP, as administrative agent for the DIP Lenders (in such capacity, the "DIP Agent," and, together with the DIP Lenders, the "DIP Secured Parties") and (b) all other documents, including, without limitation, security agreements or other collateral documents, executed or filed in connection therewith (together with the DIP Credit Agreement, the "DIP Credit Documents");

(iii) Borrow, on an interim basis, pursuant to the DIP Credit Documents and the Interim Order, post-petition financing in an aggregate principal amount of up to $5,000,000, plus the Interim Roll-Up Loans (as defined in the Interim Order) (collectively, the "Initial DIP Loans") and obtain other financial accommodations from the DIP Secured Parties pursuant to the DIP Credit Agreement, the other DIP Credit Documents, and the Interim Order;

(iv) Borrow, on a final basis, pursuant to the DIP Credit Documents and the Final Order, up to four (4) borrowings of delayed draw post-petition financing in an aggregate principal amount of up to $7,500,000 (for a total of $12,500,000), plus the Final

[3] **The Prepetition Lenders (as defined below) are also the DIP Lenders in this case and they are also the stalking horse bidder for the Debtor's assets.**

Roll-Up Loans (as defined in the Interim Order) (the "Final DIP Loans," and together with the Initial DIP Loans, the "DIP Loans") and obtain other financial accommodations from the DIP Secured Parties pursuant to the DIP Credit Agreement, the other DIP Credit Documents, and the Final Order;

(v) Execute and deliver the DIP Credit Agreement and the other DIP Credit Documents;

(vi) Grant to the DIP Secured Parties allowed super-priority administrative expense claims in the Chapter 11 Case and any Successor Case (as defined in the Interim Order) for the DIP Facility and all obligations of the Debtor owing under the DIP Credit Documents (collectively, the "DIP Obligations") subject to the priorities set forth herein;

(vii) Grant to the DIP Secured Parties automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein;

(viii) Use the proceeds of the DIP Facility in accordance with the DIP Credit Agreement, the DIP Credit Documents, and the DIP Orders, in all cases in accordance with the Approved Budget (as defined in the DIP Credit Agreement), a copy of which is attached as Exhibit B to the proposed Interim Order, and as otherwise provided in the DIP Credit Documents;

(ix) Use any Prepetition Collateral (as defined below), including Cash Collateral, and provide adequate protection to the parties that may have an interest in such Prepetition Collateral, including Cash Collateral, for any "decrease in the value," as that term is used in section 361 of the Bankruptcy Code ("Diminution in Value") of their interests therein;

(x) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Credit Documents and the DIP Orders;

(xi) Subject only to and effective upon entry of the Final Order, waive the Debtor's ability to surcharge against any DIP Collateral or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtor under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(xii) Obtain a final hearing (the "Final Hearing") to consider entry of the Final Order granting the relief requested in the DIP Motion on a final basis and approving the form of notice with respect to the Final Hearing;

(xiii) Waive, to the extent applicable, any stay of the immediate effectiveness of the DIP Orders imposed by the Bankruptcy Code or the Bankruptcy Rules, such that the DIP Orders shall be immediately effective upon entry; and

(xiv) Obtain such other and further relief as is just and proper.

II. JURISDICTION AND VENUE

2. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "Court") under 28 U.S.C. § 157 pursuant to the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent pursuant to Rule 9013-1(f) of the Local Rules to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the Bankruptcy Code; Rules 2002, 4001, 6003, 6004, and 9014 of the Bankruptcy Rules; and Local Rules 2002-1(b), 4001-2, 9006-1, and 9013-1.

III. BACKGROUND

A. General Background

5. On May 5, 2025 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no official committee of unsecured creditors has been appointed in this chapter 11 case.

6. A detailed description of the Debtor's business and facts precipitating the filing of the Debtor's chapter 11 proceeding is set forth in the First Day Declarations.

B. Prepetition Secured Debt

7. Prepetition Senior Secured Term Loan Facility. Pursuant to that certain Credit Agreement and Guaranty, dated January 24, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), among Synthego Corporation, as borrower, the guarantors from time to time party thereto, the lenders from time to time party thereto (the "Prepetition Lenders"), and Perceptive Credit Holdings III, LP, as administrative agent (the "Prepetition Agent," and together with the Prepetition Lenders, the "Prepetition Secured Parties") (such agreement, the "Prepetition Credit Agreement"), the Debtor incurred indebtedness to the Prepetition Secured Parties (such facility, the "Prepetition Facility"). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Facility was not less than $73,411,918.28, plus interest, fees and all other obligations owing under the Prepetition Facility and as set forth in the Prepetition Credit Agreement and the other credit and security documents related thereto (such documents, collectively, the "Prepetition Credit Documents," and such obligations, collectively, the "Prepetition Obligations"). **The Prepetition Lenders are also the DIP Lenders in this case and they are also the stalking horse bidder for the Debtor's assets.**

8. Prepetition Collateral. As set forth more fully in each of the Prepetition Credit Documents, prior to the Petition Date, the Debtor granted to the Prepetition Secured Parties first-priority liens (the "Prepetition Liens") on substantially all of the Debtor's assets, including, but not limited to, all accounts, chattel paper, commercial tort claims, deposit accounts, books and documents, equipment, general intangibles, inventory, investment property, letter-of-credit rights, goods, intellectual property, money, and all products and proceeds of the foregoing (collectively,

the "Prepetition Collateral"), senior to all other prepetition liens except as expressly set forth in the Prepetition Credit Documents.

IV. PROPOSED DIP FACILITY

9. The Debtor is a biotechnology company that has not yet achieved profitability. According to the Approved Budget attached as Exhibit B to the proposed Interim Order, the Debtor's cash operating losses are expected to approach $5 million over the next 13 weeks of these cases. Non-operating and restructuring-related expenditures of the Debtor are projected at approximately $7.5 million over the same period. The Debtor therefore requires an immediate infusion of new money and access to Cash Collateral in order to: (a) maintain operations, (b) fund its proposed sale process and liquidating chapter 11 plan, and (c) satisfy accruing administrative expenses. Absent immediate access to Cash Collateral and the funding available under the proposed DIP Facility, the Debtor would be unable to sustain operations, pay its employees or vendors, or achieve a successful sale and plan through the chapter 11 process. Accordingly, the Debtor has an urgent and immediate need for entry of the Interim Order as requested herein.

10. Against that backdrop, the Debtor negotiated with the DIP Lenders / Prepetition Lenders to develop the Approved Budget and a sale and plan timeline that would induce the DIP Lenders to commit to the DIP Facility and the Prepetition Lenders to consent to the use of its Cash Collateral in light of the Debtor's circumstances. After extensive good faith and arms' length negotiations, the Debtor and the DIP Lenders / Prepetition Lenders ultimately agreed on the terms of the DIP Facility and consensual use of Cash Collateral. The Debtor believes that the financing available under DIP Facility, along with consensual access to Cash Collateral, all in accordance with the projections in the Approved Budget, is adequate and that the funding

contemplated thereunder is reasonable and on market terms. The proposed DIP Facility and access to Cash Collateral will allow the Debtor to have adequate liquidity to satisfy its accruing administrative expenses during the course of this case, while pursuing a sale of its assets followed by confirmation and implementation of a liquidating chapter 11 plan. The DIP Facility includes the proposed roll-up of $37.5 million of the Prepetition Obligations, which was an integral component and a requirement in connection with the DIP Facility.

A. Financing Efforts

11. The Debtor initially engaged Paladin Management Group, LLC ("Paladin") in early 2024 as financial advisor and then subsequently in March 2025 to provide the services of a Chief Restructuring Officer. Just prior to the Petition Date, Allen Soong of Paladin was appointed as the Debtor's Chief Restructuring Officer. Over the last couple months, Paladin has re-familiarized itself with the Debtor's assets, liabilities, and operations, and taken the lead in preparing the Approved Budget. It quickly became clear to Paladin that the Debtor does not generate positive cash flow and requires additional financing in order to maintain operations. Naturally, the Prepetition Lenders, who have been advancing money to the Debtor in the past, were the most logical source for additional funding. Indeed, in late March 2025 and again in late April 2025, the Prepetition Lenders advanced additional funds to the Debtor in the amounts of $3.5 million and $4.3 million, respectively, in order to bridge the Debtor's funding needs to a chapter 11 bankruptcy filing.

12. Leading up to the Petition Date, the Debtor and its advisors engaged in vigorous, arms-length negotiations with the DIP Lenders and the Prepetition Lenders regarding the proposed terms of a DIP facility and use of Cash Collateral. Paladin also contacted various other third party funding sources about the possibility of providing debtor in possession financing

to the Debtor. Ultimately, given the Prepetition Lenders' senior collateral position in substantially all assets of the Debtor and unwillingness to consent to any priming in favor of any third party, the DIP Lenders / Prepetition Lenders were the only parties willing to lend money to the Debtor on a postpetition basis. The DIP Lenders / Prepetition Lenders also have stepped up as the stalking horse bidder for substantially all of the Debtor's assets and have set a floor for the value of such assets as part of their pending credit bid.

13. The proposed DIP Facility and the authorization to use Cash Collateral as offered by the DIP Lenders / Prepetition Lenders are the only financing option that the Debtor could obtain under the circumstances. Fully unsecured postpetition financing was not available to the Debtor. As noted, other potential sources of debtor in possession financing for the Debtor, including on a junior secured basis, were also nonexistent. The only viable path for the Debtor is to (a) obtain financing from the DIP Lenders on the terms of the proposed DIP Facility and (b) use Cash Collateral with the consent of the Prepetition Lenders, all on the terms set forth herein.

14. The Debtor believes that it is essential to the success of this case, and the culmination of its sale and plan process, that the Debtor receives immediate authority to access to the DIP Facility and use Cash Collateral.

B. Summary of Essential Terms of DIP Facility and Use of Cash Collateral

15. In accordance with Bankruptcy Rule 4001(b) and Local Rule 4001-2(a)(i)-(iii), below is a summary[4] of the essential terms of the proposed financing and use of cash collateral and the location of the same in the proposed Interim Order and/or the DIP Credit Agreement:

[4] The summary and descriptions of the terms and conditions for the proposed financing and use of cash collateral and the provisions of the proposed Interim Order and the Final Order set forth in this Motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of the significant terms thereof. The summaries and descriptions are qualified in their entirety by the proposed Interim Order, the Final Order, and the DIP Credit Documents. In the event there is any conflict between this Motion and the Interim

Borrower:	Synthego Corporation (the "Borrower"), in its capacity as debtor and debtor-in-possession.
DIP Lenders:	Perceptive Credit Holdings III, LP.
DIP Agent:	Perceptive Credit Holdings III, LP.
DIP Facility:	The DIP Facility shall consist of senior secured superpriority term loans in an aggregate principal amount of $50,000,000, consisting of: (a) $12,500,000 in new money multiple draw term loans (of which $5,000,000 in a single draw would be available upon entry of the Interim Order) and (b) $37,500,000 in rolled-up Prepetition Obligations (the "Roll-Up Loans"), of which $12,500,000 would be rolled-up upon entry of the Interim Order and the remaining $25,000,000 would be rolled up upon entry of the Final Order, subject to applicable Challenge rights as set forth in paragraph 12 of the Interim Order.
Fees:	1% closing fee and 4% exit fee calculated based on the total DIP Obligations, including Roll-Up Loans, payable at maturity. DIP Credit Agreement §3.04, §3.05.
Interest Rate:	11.5% per annum applicable margin plus the greater of a reference rate or 4.0% per annum, payable monthly in-kind; additional 3.0% default rate. DIP Credit Agreement §3.02.
Use of Proceeds:	Subject to usual and customary provisions to be set forth in the DIP Orders and the DIP Credit Agreement, and in and up to the amounts listed in the Approved Budget (subject to permitted deviations), proceeds of the DIP Loans and Cash Collateral will be used for working capital and general corporate purposes. Interim Order ¶2.
Maturity:	July 18, 2025, with customary earlier maturity dates. DIP Credit Agreement, Definition of "Maturity Date".
DIP Collateral / Priority:	In order to secure the DIP Obligations, effective and automatically perfected immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, subject to the Carve Out (as defined below), the DIP Agent will be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens on (collectively, the "DIP Liens") all real, personal, and mixed property (including equity interests), whether now existing or hereafter arising and wherever located, tangible and intangible, of the Debtor's estate, including, without limitation, all inventory, accounts

Order, the Final Order, or the DIP Credit Documents, the Interim Order, the Final Order, and the DIP Credit Documents will control in all respects.

receivable, general intangibles, contracts, chattel paper, owned real estate, real property leaseholds, governmental approvals, licenses and permits, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, securities, partnership interests, membership interests in limited liability companies, and capital stock of any subsidiary of the Debtor, including, without limitation, the products and proceeds thereof (the "DIP Collateral") and including (i) subject to entry of the Final Order granting such relief, any avoidance actions arising under Chapter 5 of the Bankruptcy Code or applicable state law equivalents (such actions, collectively, "Avoidance Actions") and commercial tort claims; and (ii) subject to entry of the Final Order granting such relief, the Debtor's rights under sections 506(c) and 550 of the Bankruptcy Code and the proceeds thereof. Notwithstanding the foregoing, the DIP Collateral shall not include (x) any contract or license under which the granting of the DIP Liens thereon would constitute a breach or termination thereof other than to the extent such breach or termination would be rendered ineffective pursuant to applicable law (including applicable state law or the Bankruptcy Code) but shall, in any event, include the proceeds of such contracts and licenses or, (y) subject to the terms and conditions of paragraph 9(b) hereof, the funds held in the Funded Reserve Account (as defined below). Interim Order ¶2(d).

The DIP Liens securing the DIP Obligations are valid, automatically perfected, and non-avoidable, and the DIP Agent shall have, subject to the Carve Out, (i) pursuant to section 364(c)(2) of the Bankruptcy Code, first-priority perfected security interests, liens, and mortgages on all DIP Collateral not subject to valid, perfected, enforceable, and non-avoidable security interests, liens, or mortgages in existence on the Petition Date; (ii) pursuant to section 364(c)(3) of the Bankruptcy Code, junior security interests, liens, and mortgages only with respect to DIP Collateral that is subject to valid Permitted Liens; and (iii) pursuant to section 364(d), first-priority, priming perfected security interests, liens, and mortgages on all other DIP Collateral, including the Prepetition Collateral. For the avoidance of doubt, the DIP Liens shall be senior to the Prepetition Liens and junior to the Carve Out. Other than as set forth herein or in the DIP Credit Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in this Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in this Chapter 11 Case or any Successor Case, upon the conversion of this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of this Chapter 11 Case or any Successor Case. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens. Interim Order ¶2(e).

DIP Superpriority Claim	Upon entry of the Interim Order, the DIP Lenders will be granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed super-priority administrative expense claims in this case and any Successor Case (collectively, the "DIP Superpriority Claims" and, together with the DIP Liens, the "DIP Protections") for all DIP Obligations, subject only to the Carve Out: (i) having priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in this case and any Successor Case, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order granting such relief), 507(a), 507(b), 546(c), 546(d), 552(b) (subject to entry of the Final Order granting such relief), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (ii) which shall at all times be senior to the rights of the Debtor and its estate, and any subsequent trustee or other estate representative to the extent permitted by law; provided that the DIP Superpriority Claims shall not be payable from the proceeds of Avoidance Actions or commercial tort claims pending entry of a Final Order granting such relief. Interim Order ¶2(h).
Use of Cash Collateral	The Debtor will be authorized to use Cash Collateral (including, without limitation, after the repayment in full of the DIP Obligations) pursuant to the terms of the DIP Orders and the DIP Credit Documents, as applicable, and in accordance with the Approved Budget (subject to the Permitted Variances). Nothing in the DIP Orders shall authorize the disposition of any assets of the Debtor or its estate outside the ordinary course of business, or the Debtor's use of any Cash Collateral (including, without limitation, proceeds of the Prepetition Collateral), except as expressly permitted in the DIP Orders, the DIP Credit Agreement, and the other DIP Credit Documents, and in accordance with the Approved Budget (subject to permitted variances). Interim Order ¶6.
Adequate Protection Package	The Prepetition Secured Parties will receive the following as adequate protection against any Diminution in Value of such Prepetition Secured Party's interest in the Prepetition Collateral caused by the imposition of the automatic stay or the Debtor's use, sale, or disposition of the Prepetition Collateral during this case (collectively, the "Adequate Protection Package"): (a) The Prepetition Agent, for the benefit of the Prepetition Secured Parties, will be granted, pursuant to sections 105, 361, 363(e), and 364(d)(1) of the Bankruptcy Code, continuing, valid, binding, enforceable, and perfected post-petition security interests in and liens on the DIP Collateral

(the "Adequate Protection Liens"). The Adequate Protection Liens will be subject to the Carve Out and the Permitted Liens as set forth in the DIP Orders and will be (i) with respect to the Prepetition Collateral, junior to the DIP Liens and senior to the Prepetition Liens, and (ii) otherwise junior only to the DIP Liens.

(b) As further adequate protection of the interests of the Prepetition Secured Parties against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Secured Parties will be granted allowed super-priority administrative expense claims in this case and any Successor Case against the Debtor under sections 503 and 507(b) of the Bankruptcy Code (the "507(b) Claim"); provided that the 507(b) Claim will not be payable from the proceeds of Avoidance Actions or commercial tort claims pending entry of a Final Order granting such relief. The 507(b) Claim also will be subject to the Carve Out and the Permitted Liens as set forth in the Interim Order and will be junior only to the DIP Superpriority Claims.

(c) As further adequate protection of the interests of the Prepetition Secured Parties, the Debtor will make the following periodic adequate protection payments to the Prepetition Secured Parties in cash (without the need for the filing of a formal fee application where otherwise applicable or comply with U.S. Trustee fee guidelines) (the "Adequate Protection Payments"): to the Prepetition Secured Parties (such parties also being the DIP Secured Parties), reasonable and documented legal fees and out-of-pocket expenses of the Prepetition Agent, Morrison & Foerster LLP, and local Delaware bankruptcy counsel Potter Anderson & Corroon LLP, in each case incurred or arising before, on, or after the Petition Date, in accordance with the DIP Orders.

(d) As further adequate protection of the interests of the Prepetition Secured Parties, the Debtor will pay the Prepetition Secured Parties, in kind, an amount equal to interest accruing upon the Prepetition Obligations at the default rate of interest as provided in and otherwise subject to the terms of the Prepetition Credit Documents in accordance with the Approved Budget. Interim Order ¶8.

Carve-Out / Professional Fees Account

The rights and claims of the DIP Secured Parties, including the DIP Obligations, DIP Liens, and DIP Superpriority Claims, and the Prepetition Secured Parties, including the Prepetition Obligations, Adequate Protection Liens, and 507(b) Claim, will be subject and subordinate in all respects to the payment of the Carve Out. As used in the DIP Orders, "Carve Out" means the following expenses: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of

the Bankruptcy Code in an amount not to exceed $25,000 (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all (A) unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of Raymond James & Associates, Inc.) (together, the "Allowed Debtor Professional Fees") incurred by persons or firms retained by the Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the "Debtor Professionals") and (B) unpaid fees and expenses (the "Allowed Committee Professional Fees" and together with the Allowed Debtor Professional Fees, collectively, the "Allowed Professional Fees") incurred by persons or firms retained by any statutory committees appointed in this Chapter 11 Case, including the Creditors' Committee (if appointed) (each, a "Committee") pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first calendar day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (these clauses (i) through (iii), the "Pre-Carve Out Trigger Amounts"); and (iv) Allowed Debtor Professional Fees not to exceed $300,000 and Allowed Committee Professional Fees not to exceed $50,000, incurred after the first calendar day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap," and together with the Pre-Carve Out Trigger Amounts, the "Carve Out Amount"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtor, its restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in the Interim Order) and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked). Interim Order ¶9(a).

For the period prior to the delivery of the Carve Out Trigger Notice, the Debtor will fund from the DIP Facility or cash on hand into a segregated trust account (the "Funded Reserve Account") held by counsel for the Debtor for the benefit of Professional Persons the amounts set forth in the Approved Budget for Professional Persons. The Debtor will use funds held in the Funded Reserve Account exclusively to pay Allowed Professional Fees and other obligations included within the Carve Out in accordance with the Approved Budget as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of the Court; provided that when all Allowed Professional Fees provided for in the Approved Budget that have funded into the Funded Reserve Account have been paid, any unused funds remaining in the Funded

Reserve Account for those periods will revert to the DIP Agent for the benefit of the DIP Lenders. Funds transferred to the Funded Reserve Account will be subject to the DIP Liens and DIP Superpriority Claims granted hereunder solely to the extent of such reversionary interest; provided, that, for the avoidance of doubt, such liens and claims will be subject in all respects to the Carve Out. Interim Order ¶9(b).

Affirmative Covenants: Customary for transactions of this type, including budget covenants, weekly reporting, and compliance with the Milestones. DIP Credit Agreement §8.

Milestones:

(a) By no later than one (1) Business Day following the Petition Date, the Debtor shall have filed a bid procedures and scheduling motion seeking approval of (i) the bidding procedures, (ii) stalking horse asset purchase agreement (including the bid protections contained therein), and (iii) the sale of substantially all of the Debtor's assets.

(b) By no later than three (3) Business Days following the Petition Date, the Court shall enter the Interim Order.

(c) By no later than twenty-four (24) days following the Petition Date, the Debtor shall have filed (i) an Acceptable Chapter 11 Plan (as defined in the DIP Credit Agreement) (including any related disclosure statement), and (ii) a motion seeking conditional approval of the disclosure statement.

(d) By no later than thirty (30) days following the Petition Date, the Debtor shall have obtained entry of (i) an order approving the bidding procedures and scheduling motion (including approval of the bid protections contained in the stalking horse asset purchase agreement) and (ii) the Final Order, in each case in form and substance acceptable to the DIP Lenders.

(e) By no later than forty-six (46) days following the Petition Date, the Debtor shall have (i) obtained entry of the order conditionally approving the disclosure statement for an Acceptable Chapter 11 Plan and (ii) held an auction, if applicable.

(f) By no later than fifty-eight (58) days following the Petition Date, the Debtor shall have obtained entry of a sale order in form and substance acceptable to the DIP Lenders.

(g) By no later than seventy (70) days following the Petition Date, the Debtor shall have consummated the sale in accordance with the sale order.

(h) By no later than eighty-four (84) days following the Petition Date, the Debtor shall have obtained entry of an order confirming the Acceptable Chapter 11 Plan.

(i) By no later than eighty-eight (88) days following the Petition Date, the effective date of an Acceptable Chapter 11 Plan shall have occurred. DIP Credit Agreement Schedule 8.22.

Negative Covenants:	Customary for transactions of this type including: limitations on indebtedness, liens, guarantees, investments, fundamental changes, affiliate transactions. DIP Credit Agreement §9.
Prepayments:	No optional prepayments on the part of the Debtor; mandatory prepayments in the event of a casualty event or asset sale. DIP Credit Agreement §3.01.
Conditions Precedent:	Customary for transactions of this type, including entry of DIP Orders and execution of requisite documents. DIP Credit Agreement §6.
Events of Default:	Customary for transactions of this type, including breach of the Milestones. DIP Credit Agreement §11.
Remedies	Upon the occurrence and during the continuation of a Termination Event, and following the giving of not less than five (5) business days' prior written notice of such occurrence by the DIP Agent, which may be via email, to the Debtor and its counsel, counsel for the Creditors' Committee, if any, and the U.S. Trustee (such notice, the "Remedies Notice," and such period, the "Remedies Notice Period"), (i) the DIP Secured Parties will be entitled to exercise any of their rights and remedies against the DIP Collateral available to them under the DIP Orders, the DIP Credit Documents, and applicable non-bankruptcy law in accordance with the DIP Credit Documents, subject to the Carve-Out; (ii) the Prepetition Secured Parties can exercise any rights and remedies to satisfy the Prepetition Obligations and obligations with respect to the Adequate Protection Package, subject to the DIP Obligations, the DIP Superpriority Claims, the Permitted Liens, and the Carve Out, in accordance with the Prepetition Credit Documents; and (iii) any obligation otherwise imposed on the DIP Secured Parties to provide any loan or advance to the Debtor pursuant to the DIP Credit Documents will immediately be terminated. During the Remedies Notice Period, the Debtor will continue to have the right to use Cash Collateral in accordance with the terms of the DIP Orders, solely to fund the Carve Out and pay necessary expenses to avoid immediate and irreparable harm to the Debtor's estate (subject to the Approved Budget and permitted variances), or as otherwise agreed to in writing by the DIP Agent or the Prepetition Agent, as applicable. Interim Order ¶19.

Expenses: The Debtor will be responsible for the DIP Lenders' and DIP Agent's reasonable costs and expenses. Interim Order ¶2(a).

Other Terms Other customary terms for DIP financings of this type, including customary stipulations, waivers, and releases subject to standard Challenge provisions and an investigation budget of $25,000 for the Committee, if any. Interim Order Recital E, ¶10, ¶12.

C. Additional Required Disclosures

16. Pursuant to Local Rule 4001-2(a)(i), a debtor in possession seeking authority to use cash collateral or obtain financing must disclose the presence and location of certain provisions contained in the documentation evidencing the cash collateral usage or financing. The debtor in possession must also justify the inclusion of certain such provisions. Set forth below are the disclosures required in accordance with Local Rule 4001-2(a)(i)(A)-(X) (most of which are also disclosed in the summary above):

(i) Local Rule 4001-2(a)(i)(A) requires a debtor to disclose the amount of cash collateral the debtor seeks permission to use or the amount of credit the debtor seeks to obtain under the proposed loan agreement, including the committed amount of the proposed loan agreement and the amount of new funding that will actually be available for borrowing by the debtor.

Amount of Cash Collateral to be used is set forth in the Approved Budget. The amount of the DIP Facility is set forth above.

(ii) Local Rule 4001-2(a)(i)(B) requires the disclosure of pricing and economic terms, including letter of credit fees, commitment fees, and any other fees, provided that when any such terms are sought to be filed under seal, they shall not be disclosed in the Financing Motion itself, but shall be set forth in a separate document filed pursuant to the procedures set forth in Local Rule 9018-1(d), the filing of which shall be disclosed in the Financing Motion.

The economic terms of the DIP Facility and the applicable paragraphs of the proposed Interim Order and/or DIP Credit Agreement, as applicable, are disclosed above and below. There are no terms sought to be filed under seal.

Local Rule 4001-2(a)(i)(C) requires the disclosure of provisions that specifically limit the Court's power or discretion to enter future orders in the case.

None, except those inconsistent with the DIP Orders.

(iii) Local Rule 4001-2(a)(i)(D) requires disclosure of provisions that provide for the funding of non-debtor affiliates with cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding.

Not applicable.

(iv) Local Rule 4001-2(a)(i)(E) requires disclosure of material conditions to closing and borrowing, including budget provisions.

The material conditions to closing and borrowing are summarized above and set forth in detail in the DIP Credit Agreement. DIP Credit Agreement §6.

(v) Local Rule 4001-2(a)(i)(F) requires disclosure of any carve-outs from liens or superpriority claims, including the material terms of any professional fee carve-out.

The provisions of the Carve-Out are set forth in the Interim Order. Interim Order ¶9.

(vi) Local Rule 4001-2(a)(i)(G) requires disclosure of provisions that provide for postpetition liens on unencumbered assets, including the identification of such assets.

The DIP Liens and Adequate Protection Liens would attach to unencumbered assets, except Avoidance Actions and commercial tort claims pending entry of the Final Order. Interim Order ¶2(d), ‖8(a).

(vii) Local Rule 4001-2(a)(i)(H) requires disclosure of provisions that establish any sale or plan milestones.

The Milestones are set forth above and in Schedule 8.22 to the DIP Credit Agreement.

(viii) Local Rule 4001-2(a)(i)(I) requires disclosure of provisions that provide for a prepayment penalty or other provisions that affect the debtor's right or ability to repay the financing in full during the course of the chapter 11 case.

The Debtor may not voluntarily prepay the DIP Facility.

(ix) Local Rule 4001-2(a)(i)(J) requires disclosure of provisions, in jointly administered cases, that govern joint liability of the debtors, including any provisions that would cause one jointly administered debtor to become liable for the prepetition debt of another jointly administered debtor for which it was not previously subject to.

Not applicable.

(x) Local Rule 4001-2(a)(i)(K) requires disclosure of provisions that require the debtor to pay an agent's or lender's expenses and attorneys' fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States Trustee, the committee appointed under section 1102 of the Bankruptcy Code (if formed) or, upon objection by either of the foregoing parties, the Court.

The provisions regarding payment of the fees and expenses of the DIP Lenders and Prepetition Lenders are disclosed in the Interim Order, which in certain instances require at least ten (10) days' notice to the Debtor, the U.S. Trustee, and any Committee appointed. Interim Order ¶2(a), ⁋8(e).

(xi) Local Rule 4001-2(a)(i)(L) requires disclosure of provisions that prohibit the use of estate funds to investigate the liens and claims of the prepetition lender.

The Interim Order provides for up to $25,000 for a Committee to investigate the Prepetition Lenders' claims and liens. Interim Order ¶10.

(xii) Local Rule 4001-2(a)(i)(M) requires disclosure of any termination or default provisions concerning the use of cash collateral or the availability of credit.

Default and termination provisions are set forth above and in the proposed Interim Order. Interim Order ¶18, ⁋19.

(xiii) Local Rule 4001-2(a)(i)(N) requires disclosure of any provisions that grant cross-collateralization protection or elevate prepetition debt to administrative expense (or higher) status or that secure prepetition debt with liens on postpetition assets (which liens the creditor would not otherwise have by virtue of the prepetition security agreement or applicable law).

There are Roll-Up Loans of $37,500,000 under the DIP Facility. Interim Order ¶4; DIP Credit Agreement §2.03.

(xiv) Local Rule 4001-2(a)(i)(O) requires disclosure of any provisions that apply the proceeds of postpetition financing to pay, in whole or in part, prepetition debt or which otherwise have the effect of converting (or "rolling up") prepetition debt to postpetition debt.

See above.

(xv) Local Rule 4001-2(a)(i)(P) requires disclosure of any provisions that immediately prime valid, perfected and non-avoidable liens existing immediately prior to the petition date or that are perfected subsequent to the petition date as permitted by section 546(b) of the Bankruptcy Code, in each case that are senior to the lender's prepetition liens under applicable law, without the consent of the affected secured creditors, and the proposed notice to be provided to such affected secured creditors.

The proposed DIP Orders do not provide for the priming of any pre-existing secured liens, other than the Prepetition Liens with the consent of the Prepetition Lenders. Interim Order ¶2(e).

(xvi) Local Rule 4001-2(a)(i)(Q) requires disclosure of any provisions or findings of fact that (i) bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest, including, but not limited to, any official committee appointed in this case, at least seventy-five (75) days from the entry of the initial interim order to investigate such matters or (ii) limit the Court's ability to grant relief in the event of a successful challenge.

The proposed DIP Orders provide that any stipulations, waivers, and releases by the Debtor relating to the validity, amount, and priority of the Prepetition Obligations and Prepetition Liens are subject to Challenge by parties in interest by no later 75 days of entry of the Interim Order. Interim Order ¶12(a). No provisions in the proposed DIP Orders limit the ability of the Court to grant relief in the event of a successful Challenge.

(xvii) Local Rule 4001-2(a)(i)(R) requires disclosure of any provisions that immediately approve all terms and conditions of the underlying loan agreement (provided that provisions in the order that provide that the debtor is authorized to enter into and be bound by the terms and conditions of such loan agreement do not need to be summarized).

The DIP Credit Documents and the authority of the Debtor to enter into same are approved upon entry of the Interim Order, except as to certain provisions (liens on proceeds of Avoidance Actions and commercial tort claims and certain waivers), which are only approved upon entry of the Final Order.

(xviii) Local Rule 4001-2(a)(i)(S) requires disclosure of any provisions that modify or terminate the automatic stay or permit the lender to enforce remedies following an event of default that do not require at least five (5) days' written notice to the trustee or debtor in possession, the Office of the United States Trustee and each committee appointed under sections 1102 and 1114 of the Bankruptcy Code (the "Remedies Notice Period"), prior to such modification or termination of the automatic stay or the enforcement of the lender's remedies.

Termination of the automatic stay to enable the DIP Lenders and the Prepetition Lenders to enforce remedies is subject to a five (5) business day Remedies Notice Period. Interim Order ¶19.

(xix) Local Rule 4001-2(a)(i)(T) requires disclosure of any provisions that seek to limit what parties in interest (other than the debtor) may raise at any emergency hearing scheduled during the Remedies Notice Period.

The DIP Orders provide that, during the Remedies Notice Period, the Debtor and/or any other party in interest shall be entitled to seek an emergency

hearing to consider (x) whether a DIP Termination Event has occurred and (y) any other appropriate relief. Interim Order ¶19(b).

(xx) Local Rule 4001-2(a)(i)(U) requires disclosure of any provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, and 548 of the Bankruptcy Code or, in each case, the proceeds thereof.

Liens on Avoidance Actions and commercial tort claims are effective only upon entry of the Final Order. Interim Order ¶2(d); ⁋8(a).

(xxi) Local Rule 4001-2(a)(i)(V) requires disclosure of any provisions that immediately waive the debtor's rights under section 506(c) of the Bankruptcy Code.

Section 506(c) waiver effective upon entry of Final Order. Interim Order ¶14.

(xxii) Local Rule 4001-2(a)(i)(W) requires disclosure of any provisions that immediately seek to affect the Court's power to consider the equities of the case doctrine under section 552(b)(1) of the Bankruptcy Code.

Equities of the case exception effective upon entry of Final Order. Interim Order ¶ 23(f).

(xxiii) Local Rule 4001-2(a)(i)(X) requires disclosure of any provisions that immediately shield the lender from the equitable doctrine of "marshalling" or any similar doctrine.

Marshaling waiver effective upon entry of the Final Order. Interim Order ¶ 23(e).

D. Need for Financing and Use of Cash Collateral

17. As addressed earlier, the Debtor has an immediate and critical need to use Cash Collateral and obtain the DIP Facility to, among other things: (a) permit the orderly operation of its business; (b) maintain business relationships; (c) satisfy working capital, operational, and general corporate needs; and (d) fund costs and expenses related to this case, including the Debtor's ongoing sale and plan process. The ability of the Debtor to maintain business relationships with its vendors, suppliers, and customers requires the availability of working capital from the DIP Facility and Cash Collateral, the absence of which would immediately and irreparably harm the Debtor, its estate, and parties-in-interest. The Debtor does not have sufficient available sources of

working capital and financing to operate its business in the ordinary course throughout this case without access to the DIP Facility and authorized use of Cash Collateral. In the absence of the DIP Facility and the use of Cash Collateral, the Debtor's business and estate would suffer immediate and irreparable harm. Access to the DIP Facility and Cash Collateral will provide the Debtor with sufficient working capital and liquidity to operate during this case and is vital to the continuation of the Debtor's ongoing sale and plan process. Without access to the DIP Facility and Cash Collateral, the Debtor would run out of money and its ability to maintain going concern operations and value will be significantly impaired.

18. The Debtor is unable to obtain financing on more favorable terms from sources other than the DIP Lenders and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor also is unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without granting to the DIP Lenders, the DIP Liens and the DIP Superpriority Claims, in each case subject to the Carve-Out to the extent set forth herein, under the terms and conditions set forth in the DIP Orders and the DIP Credit Documents.

V. BASIS FOR RELIEF

A. The Debtor Should Be Permitted to Obtain Postpetition Financing Pursuant to Section 364(c) of the Bankruptcy Code.

19. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that the debtor seeking postpetition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(l) of [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c).

20. In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider similar factors, including whether:

a. unencumbered credit or alternative financing without superpriority status is available to the debtor;

b. the credit transactions are necessary to preserve assets of the estate;

c. the terms of the credit agreement are fair, reasonable, and adequate;

d. the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors; and

e. the proposed financing agreement adequately protects the DIP Lender.

See, e.g., In re Aqua Assoc., 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)).

21. For the reasons discussed below, the Debtor satisfies the standards required to obtain postpetition financing in this case on a senior secured superpriority basis as to the DIP Collateral under sections 364(c)(1), (2), and (d)(1) of the Bankruptcy Code.

B. <u>The Debtor is Unable to Obtain Financing on More Favorable Terms.</u>

22. As discussed above, the Debtor carefully considered its financing options. Ultimately, the Debtor determined that the DIP Facility provides the Debtor with the only viable postpetition financing option available and should be approved by this Court.

23. The Debtor respectfully submits that its efforts to obtain postpetition financing therefore satisfy the standard required under section 364(c) of the Bankruptcy Code. *See, e.g., In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (where few lenders can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing").

C. The Proposed DIP Facility is Necessary to Maximize the Value of the Debtor's Estate.

24. The Debtor seeks to use the DIP Facility for general working capital purposes, ordinary business expenses such as payroll, and bankruptcy-related costs and expenses, in accordance with the Approved Budget, to maximize value through an orderly sale process. The DIP Facility represents the best and only economic alternative for a new debtor-in-possession lending arrangement.

25. Simply put, without immediate access to the DIP Facility and use of Cash Collateral, the Debtor cannot continue to operate its business, which would irreparably damage the Debtor's efforts to effectuate a going concern sale and confirm a liquidating chapter 11 plan for the benefit of all constituents. Accordingly, the Debtor urges the Court to authorize the Debtor to access the DIP Facility and use Cash Collateral on the terms contemplated herein.

D. The Terms of the Proposed DIP Facility, Including the Roll-Up Loans, are Fair, Reasonable, and Appropriate.

26. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

27. The terms of the DIP Facility were negotiated in good faith and at arm's-length between the Debtor, the DIP Lenders, and the Prepetition Lenders, resulting in an agreement that is designed to permit the Debtor to maximize the value of its assets. The Debtor submits that the proposed terms of the DIP Facility are fair, reasonable, and appropriate under the circumstances. *See, e.g.*, *Bray v. Shenandoah Fed. Sav. and Loan Ass'n (In re Snowshoe Co.)*, 789

F.2d 1085, 1088 (4th Cir. 1986) (stating that section 364(d) of the Bankruptcy Code imposes no duty to seek credit from every possible lender); *In re Western Pacific Airlines, Inc.*, 223 B.R. 567 (Bankr. D. Colo. 1997) (authorizing postpetition financing that would preserve the value of the debtor's assets). Further, the Prepetition Lenders consent to the use of the Cash Collateral.

28. As to the proposed Roll-Up Loans, the Debtor submits that the proposed 3:1 roll-up of Prepetitioon Obligations versus new money DIP Loans is fair, equitable, and in the best interest of the Debtor's estate and should be approved through the DIP Orders. The Debtor's acceptance of the Roll-Up Loans is also a sound exercise of the Debtor's business judgment.

29. Courts in this District have regularly approved roll-ups made pursuant to new money debtor-in-possession financings, including on an interim basis, in recognition of the fact that such terms are often needed for chapter 11 debtors to secure favorable postpetition financing. *See, e.g., In re Sientra, Inc.*, Case No. 24-10245 (JTD) (Bankr. D. Del. Feb. 14, 2024) (interim order authorizing $22 million new money loans and $35 million in roll-up loans); *In re Nogin, Inc.*, No. 23-11945 (CTG) (Bankr. D. Del. Dec. 7, 2023) (authorizing $19.2 million of total financing through interim order, inclusive of a refinancing of $8.5 million of prepetition debt); *In re Phoenix Services Topco LLC*, No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) (authorizing $25 million in new money on an interim basis with an additional $25 million funding into escrow on an interim basis available for draw and a roll-up of approximately $75 million pursuant to interim order); *In re TPC Group Inc.*, No. 22-10493 (CTG) (Bankr. D. Del. June 3, 2022) (authorizing $32 million in new money and a roll-up of $59 million pursuant to interim order); *In re Nine Point Energy Holdings, Inc.*, No. 21-10570 (MFW) (Bankr. D. Del. March 17, 2021) (authorizing $13 million in new money and a roll-up of $39 million pursuant to interim order); *In re True Religion Apparel, Inc.*, No. 20-10941 (CSS) (Bankr. D. Del. Apr. 15, 2020) [D.I.

78] (authorizing a DIP facility comprising (among other things) $1,700,000 in new money to be provided following the entry of an interim order, $6,700,000 of new money to be provided following the entry of the final order and a rollup of approximately $45 million in prepetition obligations pursuant to interim order); *In re APC Automotive Techs. Intermediate Hldgs., LLC*, Case No. 20- 11466 (CSS) (Bankr. D. Del. June 4, 2020) (authorizing a full roll-up of approximately $90 million of an asset-based lending (ABL) facility upon entry of an interim order); *In re Blackhawk Mining LLC*, Case No. 19-11595 (LSS) (Bankr. D. Del. Aug. 13, 2019) (authorizing an approximately $240 million DIP that included a roll-up of $70 million in prepetition term loan debt and up to $82 million of prepetition ABL debt pursuant to interim order); *In re ATD Corp.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (authorizing an approximately $1.23 billion DIP which included a full roll-up of the prepetition ABL outstanding principal of $639 million pursuant to interim order); *In re Remington Outdoor Co., Inc.*, No. 18-10684 (BLS) (Bank. D. Del. Apr. 16, 2018) [D.I. 177] (authorizing the roll-up of prepetition loans provided by an insider of the debtor on an interim basis, applying the business judgment standard); *In re Bon-Ton Stores, Inc.*, Case No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (authorizing full roll-up of all $489 million outstanding prepetition revolving obligations pursuant to interim order).

30. For the Debtor to obtain the benefits of the DIP Facility, the Debtor and the DIP Lenders agreed to the terms of the roll-up as incorporated into the DIP Facility. The DIP Lenders would not otherwise extend credit to the Debtor without such roll-up provisions. Accordingly, the proposed Roll-Up Loans constitute an appropriate exercise of the Debtor's business judgment and should be approved.

E. The Carve-Out is Appropriate.

31. The DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Obligations, Adequate Protection Liens, and 507(b) Claim are subject and subordinate to the Carve-Out. The Carve-Out contains similar terms to others that this Court has found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from their advisors. Without the Carve-Out, the Debtor's estate may be deprived of possible rights and powers if the services for which professionals may be compensated are restricted. *See In re Ames Dep't Stores, Inc*., 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of this case by ensuring that assets remain for the payment of the U.S. Trustee fees, a chapter 7 trustee, if applicable, and estate professional fees, including any Committee that may be appointed. Accordingly, the Carve-Out is appropriate and should be approved.

F. The DIP Secured Parties Should Be Deemed Good Faith Lenders.

32. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

33. Here, the Debtor believes the DIP Facility embodies the most favorable terms on which the Debtor could obtain postpetition financing. All negotiations of the terms of the DIP Facility with the DIP Lenders were conducted in good faith and at arms' length. The terms and conditions of the DIP Documents are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, and in accordance with the DIP Orders and the DIP Credit Documents, including the Approved Budget. Any consideration being provided to any of the DIP Lenders is described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

G. The Proposed DIP Facility Reflects the Debtor's Sound Business Judgment.

34. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g., Trans World Airlines, Inc. v. Travelers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition credit facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 38 (financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment).

35. Bankruptcy courts routinely accept a debtor's business judgment on many business decisions, including the decision to borrow money. *See, e.g., Group of Inst. Investors v. Chicago, Mil., St. P. & Pac.*, 318 U.S. 523, 550 (1943) (holding that decisions regarding assumption or rejection of leases are left to the business judgment of the debtor); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."). Further, one court has noted that "[m]ore exacting scrutiny [of

the debtors' business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

36. Bankruptcy courts generally will defer to a debtor in possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. *In re Curlew Valley Associates*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981); *see also Trans World Airlines, Inc.*, 163 B.R. at 974 (approving interim loan, receivables facility and asset-based facility based upon prudent business judgment of the debtor). Generally courts will not second-guess a debtor in possession's business decisions involving "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." *Curlew Valley*, 14 B.R. at 513-14 (footnotes omitted).

37. The Debtor believes that the economics underlying the DIP Facility are fair and reasonable and consistent with, or better than, market norms. For these reasons and those set forth above, the Debtor's sound business judgment clearly supports approval of the DIP Facility. Access to the DIP Facility, along with use of Cash Collateral, will allow the Debtor to continue to operate, thus maximizing value for all of its constituents.

H. Section 363 of the Bankruptcy Code Authorizes the Debtor's Use of Cash Collateral.

38. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (A) each entity that has an interest in such cash collateral provides consent, or (B) the court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in

possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

39. Here, the DIP Lenders and the Prepetition Lenders consent to the use of Cash Collateral on the terms set forth in the DIP Orders.

40. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, "only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a Final hearing." Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. at 449; *see also In re Ames Dep't Stores Inc.,* 115 B.R. at 38. After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor's business.

41. As previously noted, in order to continue operating and satisfying accruing administrative expenses, the Debtor requires access to the DIP Facility and the use of Cash Collateral. Such use will provide the Debtor with the necessary funds to remain administratively solvent, while the Debtor pursues a going concern sale of its assets.

42. Absent access to Cash Collateral, the Debtor would face immediate and irreparable harm. The Debtor would likely be forced to cease operations and convert this chapter 11 case to one under chapter 7. Jobs would be lost and substantial value destroyed. Thus, immediate access to Cash Collateral is essential to the Debtor's ability to maximize value for the benefit of all constituents.

I. Interim Order and Final Hearing

43. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court schedule a Final Hearing within approximately thirty (30) calendar days of the Petition Date to consider approval of this Motion on a final basis, which is also consistent with the Milestones.

44. The urgent need to avoid immediate and irreparable harm to the Debtor's estate makes it imperative that the Debtor be authorized to access the DIP Facility and use Cash Collateral pending the Final Hearing, in order to allow the Debtor to operate and administer this case on a postpetition basis. Without the ability to make draws under the DIP Facility and use Cash Collateral, the Debtor would be unable to satisfy accruing postpetition obligations, including payroll, and would not be able to conduct a value-maximizing sale and plan process, thus causing irreparable harm to the Debtor and the value of this estate. Accordingly, the Debtor respectfully requests that, pending the Final Hearing, the Interim Order be approved and that the terms and provisions of the Interim Order be implemented and be deemed binding and that, after the Final Hearing, the Final Order be approved in all respects and the terms and provisions of the Final Order be implemented and be deemed binding.

J. Waiver of Bankruptcy Rule 6004(a) and 6004(h)

45. To implement the foregoing successfully, the Debtor requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtor has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

VI. NOTICE

46. The Debtor will provide notice of this Motion to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Securities and Exchange Commission; (iii) the Office of the United States Attorney for the District of Delaware; (iv) the Internal Revenue Service; (v) the Debtor's thirty (30) largest unsecured creditors; (vi) counsel to the DIP Secured Parties and Prepetition Secured Parties; (vii) any party asserting a known lien in the Debtor's assets; and (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within two business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m).

VII. NO PRIOR REQUEST

47. The Debtor has not made any prior request for the relief sought herein to this Court or any other court.

WHEREFORE, the Debtor respectfully requests entry of the Interim Order and, after Final Hearing, the Final Order, granting the relief requested herein and such other relief as is just and proper.

Dated: May 6, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

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Proposed Counsel to the
Debtor and Debtor in Possession

EXHIBIT 1

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SYNTHEGO CORPORATION,[1] Debtor.	Chapter 11 Case No. 25-10823 (___)

INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "**DIP Motion**") dated May [5], 2025, of the above-captioned debtor and debtor-in-possession (the "**Debtor**") in the above-referenced chapter 11 case (the "**Chapter 11 Case**"), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"); Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); and Rules 2002-1(b), 4001-2, 9006-1, and 9013-1 of the Local Bankruptcy Rules for the District of Delaware (the "**Local Rules**"), for entry of an interim order (the "**Interim Order**") authorizing the Debtor to, among other things:

(i) Obtain senior secured, superpriority, debtor-in-possession financing in the aggregate principal amount of up to $50,000,000 (the "**DIP Facility**") pursuant to the terms and conditions of the DIP Credit Documents (as defined below), the Interim Order, and the Final Order (as defined below);

(ii) Enter into and perform under the (a) Senior Secured Debtor-In-Possession Term Loan Credit Agreement (the "**DIP Credit Agreement**"), substantially in the form attached as **Exhibit A** hereto, by and among Synthego Corporation, as borrower, Perceptive Credit Holdings III, LP and each other lender from time to time party thereto (in such capacities, the "**DIP Lenders**"), and Perceptive Credit Holdings

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

III, LP, as administrative agent for the DIP Lenders (in such capacity, the "**DIP Agent**," and, together with the DIP Lenders, the "**DIP Secured Parties**") and (b) all other documents, including, without limitation, security agreements or other collateral documents, executed or filed in connection therewith (together with the DIP Credit Agreement, the "**DIP Credit Documents**");

(iii) Borrow, on an interim basis, pursuant to the DIP Credit Documents and this Interim Order, post-petition financing in an aggregate principal amount of up to $5,000,000, plus the Interim Roll-Up Loans (as defined below) (collectively, the "**Initial DIP Loans**") and obtain other financial accommodations from the DIP Secured Parties pursuant to the DIP Credit Agreement, the other DIP Credit Documents, and the Interim Order;

(iv) Borrow, on a final basis, pursuant to the DIP Credit Documents and the Final Order, up to four (4) borrowings of delayed draw post-petition financing in an aggregate principal amount of up to $7,500,000 (for a total of $12,500,000), plus the Final Roll-Up Loans (as defined below) (the "**Final DIP Loans**," and together with the Initial DIP Loans, the "**DIP Loans**") and obtain other financial accommodations from the DIP Secured Parties pursuant to the DIP Credit Agreement, the other DIP Credit Documents, and the Final Order;

(v) Execute and deliver the DIP Credit Agreement and the other DIP Credit Documents;

(vi) Grant to the DIP Secured Parties allowed super-priority administrative expense claims in the Chapter 11 Case and any Successor Case (as defined below) for the DIP Facility and all obligations of the Debtor owing under the DIP Credit Documents (collectively, the "**DIP Obligations**") subject to the priorities set forth herein;

(vii) Grant to the DIP Secured Parties automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("**Cash Collateral**"), which liens shall be subject to the priorities set forth herein;

(viii) Use the proceeds of the DIP Facility in accordance with the DIP Credit Agreement, the DIP Credit Documents, and this Interim Order, in all cases in accordance with the Approved Budget (as defined in the DIP Credit Agreement), a copy of which is attached hereto as **Exhibit B**, and as otherwise provided in the DIP Credit Documents;

(ix) Use any Prepetition Collateral (as defined below), including Cash Collateral, and provide adequate protection to the parties that may have an interest in such Prepetition Collateral, including Cash Collateral, for any "decrease in the value," as that term is used in section 361 of the Bankruptcy Code ("**Diminution in Value**") of their interests therein;

(x) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Credit Documents and this Interim Order;

(xi) Subject only to and effective upon entry of the Final Order (as defined below), waive the Debtor's ability to surcharge against any DIP Collateral or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtor under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(xii) Obtain a final hearing (the "**Final Hearing**") to consider entry of an order (the "**Final Order**") granting the relief requested in the DIP Motion on a final basis and approving the form of notice with respect to the Final Hearing;

(xiii) Waive, to the extent applicable, any stay of the immediate effectiveness of this Interim Order imposed by the Bankruptcy Code or the Bankruptcy Rules, such that this Interim Order shall be immediately effective upon its entry on the docket of the United States Bankruptcy Court for the District of Delaware (the "**Court**"); and

(xiv) Obtain such other and further relief as is just and proper.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Craig Christianson in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the "**Christianson First Day Declaration**") and the *Declaration of Allen Soong in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the "**Soong First Day Declaration**" and, together with the Christianson First Day Declaration, the "**First Day Declarations**"), and the evidence submitted or adduced and the arguments of counsel made at the hearing on this Interim Order (the "**Interim Hearing**"); and notice of the DIP Motion and the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b)-(d), and 9014, and all applicable Local Rules; and the Interim Hearing having been held and concluded; and it appearing that granting the relief requested in the DIP Motion on an interim basis is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing, and is otherwise fair and reasonable and in the best interests of the Debtor, its estate, and its creditors, and is essential for the preservation of the value of the Debtor's assets; and it appearing that the Debtor's entry into the

DIP Credit Documents is a sound and prudent exercise of the Debtor's business judgment; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved, or overruled by the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, IT IS FOUND AND DETERMINED THAT:[2]

A. **Petition Date**. On May 5, 2025 (the "**Petition Date**"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code with this Court.

B. **Debtor in Possession**. The Debtor is authorized to continue operating its business and managing its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors (the "**Creditors' Committee**") has been appointed in this Chapter 11 Case.

C. **Jurisdiction and Venue**. This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Venue for this Chapter 11 Case and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution.

D. **Notice**. Notice of the Interim Hearing and notice of the DIP Motion have been provided by the Debtor to (i) the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"); (ii) the United States Securities and Exchange Commission; (iii) the Office

[2] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

of the United States Attorney for the District of Delaware; (iv) the Internal Revenue Service; (v) the Debtor's thirty (30) largest unsecured creditors; (vi) counsel to the DIP Secured Parties and Prepetition Secured Parties; (vii) any party asserting a known lien in the Debtor's assets; and (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, such notice of the Interim Hearing and the DIP Motion constitutes adequate and sufficient notice and complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(b)-(d), and 9014, and the Local Rules, and no other or further notice of the DIP Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

E. **Debtor's Stipulations**. After consultation with its attorneys and financial advisors, and subject to and without prejudice to the rights of parties-in-interest as set forth in paragraph 12 herein, the Debtor, on its behalf and on behalf of its estate, admits, stipulates, acknowledges, and agrees to the following (collectively, the "**Debtor's Stipulations**"):

(i) *Prepetition Senior Secured Term Loan Facility*. Pursuant to that certain Credit Agreement and Guaranty, dated January 24, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), among Synthego Corporation, as borrower, the guarantors from time to time party thereto, the lenders from time to time party thereto (the "**Prepetition Lenders**"), and Perceptive Credit Holdings III, LP, as administrative agent (the "**Prepetition Agent**," and together with the Prepetition Lenders, the "**Prepetition Secured Parties**") (such agreement, the "**Prepetition Credit Agreement**"), the Debtor incurred indebtedness to the Prepetition Secured Parties (such facility, the "**Prepetition Facility**"). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Facility was not less than $73,411,918.28, plus interest, fees and all other obligations owing under the Prepetition Facility and as set forth in the Prepetition Credit Agreement and the other credit and

security documents related thereto (such documents, collectively, the "**Prepetition Credit Documents**," and such obligations, collectively, the "**Prepetition Obligations**").

(ii) *Prepetition Collateral*. As set forth more fully in each of the Prepetition Credit Documents, prior to the Petition Date, the Debtor granted to the Prepetition Secured Parties first-priority liens (the "**Prepetition Liens**") on substantially all of the Debtor's assets, including, but not limited to, all accounts, chattel paper, commercial tort claims, deposit accounts, books and documents, equipment, general intangibles, inventory, investment property, letter-of-credit rights, goods, intellectual property, money, and all products and proceeds of the foregoing (collectively, the "**Prepetition Collateral**"), senior to all other prepetition liens except as expressly set forth in the Prepetition Credit Documents.

(iii) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Obligations*. The Debtor acknowledges that, as of the Petition Date, (a) the Prepetition Liens on the Prepetition Collateral were and continue to be valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens on the Prepetition Collateral were properly perfected prior to the Petition Date (or perfected on or after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code); (c) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law (including any that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (the "**Permitted Liens**"); (d) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor enforceable in accordance with the terms of the Prepetition Credit Documents; (e) no offsets, recoupments, challenges, objections, defenses, claims, deductions, or counterclaims of any

kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (f) the Debtor and its estate has no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against the Prepetition Secured Parties, or any of its or their affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to the Prepetition Obligations; (g) the Debtor waives, discharges, and releases any right to challenge any of the Prepetition Obligations or the Prepetition Liens, the priority of the Debtor's obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Obligations; and (h) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code, up to the value of the Debtor's assets secured by the Prepetition Liens.

(iv) *Permitted Liens*. Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable relative to the Prepetition Liens. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtor or the Creditors' Committee (if any) to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Lien and/or security interests (other than the Prepetition Liens or the DIP Liens (as defined below)). For the purposes hereof, any alleged claim arising or asserted as a right of reclamation or return (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) is not a Permitted Lien. Any alleged claim arising or asserted as a right of reclamation

or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Facility, DIP Liens, and DIP Collateral as such claims had with respect to the Prepetition Liens in the Prepetition Collateral and the DIP Collateral.

(v) *Sale and Credit Bidding*. Any of the DIP Secured Parties or the Prepetition Secured Parties shall have the right to credit bid the entirety of (and any portion of) the Prepetition Obligations, the DIP Obligations, and/or the Adequate Protection Obligations as applicable, secured by their respective liens and security interests. For the avoidance of doubt, the DIP Roll-Up Loans and the Prepetition Obligations shall remain subject to the reservation of rights in paragraph 12 below notwithstanding any credit bid of the DIP Roll-Up Loans or the Prepetition Obligations.

(vi) *Default of the Debtor.* As of and upon the Petition Date, events of default have occurred under the terms of the Prepetition Credit Agreement.

(vii) *Limits on Lender Liability*. Nothing in this Interim Order, any of the DIP Credit Documents, any of the Prepetition Credit Documents, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtor in the operation of its business or in connection with the administration of this Chapter 11 Case or any Successor Case. The DIP Secured Parties and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral, be deemed in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et

seq., as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP Credit Documents shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtor.

(viii) *Cash Collateral*. All of the Debtor's cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtor, whether subject to control agreements or otherwise, and any amount generated by the collection of accounts receivable or other disposition of the Prepetition Collateral, and the proceeds of any of the foregoing, whether existing on the Petition Date or thereafter, constitute Cash Collateral within the meaning of section 363(a) of the Bankruptcy Code and is Prepetition Collateral of the Prepetition Secured Parties.

F. **Findings Regarding the DIP Facility**.

(i) *Need for DIP Facility and to Use Cash Collateral*. An immediate need exists for the Debtor to obtain funds from the Initial DIP Loans and to use Cash Collateral in order to continue operations, fund payroll and operating expenses, and administer and preserve the value of its estate pending the Final Hearing. The ability of the Debtor to finance its operations through the incurrence of the Initial DIP Loans and use of Cash Collateral is vital to the preservation and maintenance of the going concern value of the Debtor's estate, to maximize the value of the Debtor's assets for the benefit of its creditors, and to avoid immediate and irreparable harm to the Debtor, its estate, and its creditors.

(ii) *No Credit Available on More Favorable Terms*. The Debtor has been unable to obtain (a) unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense or (b) credit for money borrowed secured by a lien on property of its estate on more favorable terms and conditions than those provided in the DIP Credit Agreement and this

Interim Order. The Debtor is unable to obtain credit for borrowed money without granting to the DIP Secured Parties the DIP Protections (as defined below).

G. **Adequate Protection**. The Prepetition Secured Parties are entitled to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection, the Prepetition Secured Parties will receive (i) adequate protection liens and superpriority claims, as more fully set forth in paragraph 8 herein; and (ii) periodic payments and payment of reasonable and documented legal fees and out-of-pocket expenses arising before and after the Petition Date, as more fully set forth in paragraphs 2(a) and 8(e) herein; provided that nothing in the DIP Documents or herein shall (x) be construed as a consent by any of the Prepetition Secured Parties to or authorization by the Court of the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Facility authorized by this Interim Order to the extent such consent has been given or (y) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different, or additional adequate protection or assert any rights of the Prepetition Secured Parties.

H. **Sections 506(c) and 552(b)**. Subject to and effective upon entry of the Final Order granting such relief, the Debtor shall be deemed to have waived the provisions of section 506(c) of the Bankruptcy Code and any "equities of the case" exception under section 552(b) of the Bankruptcy Code as part of the DIP Facility. Further, subject to and effective upon entry of the Final Order granting such relief, no expenses of administration of this Chapter 11 Case or any other proceedings superseding or related to the foregoing, including any subsequent chapter 7 case ("**Successor Case**") shall be charged against or recovered from the DIP Collateral or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of

collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent or Prepetition Agent, as applicable, and no consent shall be implied from any action, inaction, or acquiescence by the DIP Secured Parties or Prepetition Secured Parties, as applicable. The foregoing is a condition and a material inducement to the Prepetition Secured Parties' consent to the use of Cash Collateral.

I. **Use of Proceeds of the DIP Facility**. Proceeds of the DIP Facility (net of any amounts used to pay fees, costs, and expenses under the DIP Credit Documents) shall be used in a manner consistent with the terms and conditions of the DIP Credit Agreement and this Interim Order and in accordance with the Approved Budget.

J. **Application of Proceeds of DIP Collateral**. All proceeds of any sale or other disposition of the DIP Collateral (as defined below) shall be applied in accordance with the Approved Budget and the terms and conditions of the DIP Credit Documents and this Interim Order.

K. **Roll-Up of Prepetition Obligations**. Upon entry of this Interim Order, without any further action by the Debtor or any other party, $12,500,000 of the outstanding Prepetition Obligations shall constitute DIP Obligations under and as further described in the DIP Credit Agreement (the "**Interim Roll-Up Loans**"). Upon entry of the Final Order, without any further action by the Debtor or any other party, $25,000,000 of the remaining outstanding Prepetition Obligations shall constitute DIP Obligations under and as further described in the DIP Credit Agreement (the "**Final Roll-Up Loans**" and together with the Interim Roll-Up Loans, the "**DIP Roll-Up Loans**"). The replacement and refinancing (or "roll-up") of the DIP Roll-Up Loans shall be authorized as compensation for, in consideration for, and solely on account of the agreement of

the DIP Lenders to fund amounts and provide other consideration to the Debtor under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. The Prepetition Secured Parties would not otherwise consent to the use of the Prepetition Collateral, and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the Debtor thereunder without the inclusion of (i) the Interim Roll-Up Loans, upon entry of this Interim Order, and (ii) the Final Roll-Up Loans, upon entry of the Final Order. Moreover, the replacement and refinancing of the DIP Roll-Up Loans into DIP Obligations will enable the Debtor to obtain urgently needed financing to administer this Chapter 11 Case and fund its operations. Because the DIP Roll-Up Loans are subject to the reservation of rights in paragraph 12 below and the Final Roll-Up Loans are subject to entry of a final order granting such relief, they will not prejudice the right of any other party in interest.

L. **Effect of Reversal, Good Faith**. The DIP Secured Parties have indicated a willingness to provide financing to the Debtor in accordance with the DIP Credit Agreement and this Interim Order, and provided that the DIP Obligations, DIP Liens, and other protections granted by this Interim Order and the DIP Credit Documents will not be affected by any subsequent reversal or modification of this Interim Order as provided in section 364(e) of the Bankruptcy Code. Based upon the First Day Declarations, and the record at the Interim Hearing, the DIP Secured Parties have acted in good faith in connection with negotiating the DIP Credit Documents and agreeing to provide the DIP Facility approved by this Interim Order and the DIP Secured Parties' claims, superpriority claims, security interests, and liens and other protections granted pursuant to this Interim Order and the DIP Credit Documents will have the protections provided by section 364(e) of the Bankruptcy Code. Accordingly, the DIP Secured Parties' claims, superpriority claims, replacement liens, and other protections granted pursuant to this Interim

Order will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument, or reconsideration of this Interim Order or any other order, solely to the extent such claims, superpriority claims, replacement liens, and other protections exist as of the date of any such subsequent reversal, modification, vacatur, amendment, reargument, or reconsideration.

M. **Business Judgment and Good Faith Pursuant to Section 364(e)**. Based upon the First Day Declarations, and the record at the Interim Hearing:

(i) The terms and conditions of the DIP Facility and the DIP Credit Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration;

(ii) The DIP Credit Documents and use of Cash Collateral were negotiated in good faith and at arm's length between the Debtor and the DIP Secured Parties; and

(iii) The proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Secured Parties are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

N. **Findings Regarding Corporate Authority**. The Debtor has all requisite corporate authority to execute and deliver the DIP Credit Documents to which it is a party and to perform its obligations thereunder.

O. **Relief Essential; Best Interest; Good Cause for Immediate Entry**. Good cause has been shown for the relief requested in the DIP Motion (and as provided in this Interim Order) and such relief is necessary, essential, and appropriate for the preservation of the Debtor's assets, business, and property. It is in the best interest of the Debtor's estate to be allowed to enter into the DIP Facility contemplated by the DIP Credit Agreement. Accordingly, this Court finds that

entry of this Interim Order is necessary to avoid immediate and irreparable harm to the Debtor's estate, is critical to the Debtor's ability to maximize the value of its estate, is in the best interests of the Debtor's estate, and is necessary, essential, and appropriate for the continued operation of the Debtor's business and the management and preservation of its assets and properties.

NOW, THEREFORE, based upon the foregoing findings, and upon consideration of the DIP Motion and the record made before this Court with respect to the DIP Motion, including the record created during the Interim Hearing, and with the consent of the Debtor, the DIP Agent, and the Prepetition Secured Parties to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. **Motion Granted**. The DIP Motion is granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Credit Agreement. Any objections to the DIP Motion with respect to entry of this Interim Order to the extent not withdrawn, waived, or otherwise resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. The use of Cash Collateral (as defined herein) on an interim basis is authorized, subject to the terms of this Interim Order.

2. **DIP Credit Documents**.

(a) **Approval of Entry into and Performance Under the DIP Credit Documents**. The DIP Facility, including the Interim Roll-Up Loans (whereas the Final Roll-Up Loans shall be subject to entry of the Final Order), is hereby approved. The Debtor is authorized and empowered to execute and deliver the DIP Credit Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Credit Documents, to execute and deliver all instruments and documents that may be required or necessary for the performance by the Debtor under the DIP Credit Documents and the creation and

perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Credit Documents, and to take such further acts as may be necessary. The Debtor is hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, indemnities, and other amounts described in the DIP Credit Agreement and all other DIP Credit Documents as such become due, including, without limitation, reasonable attorneys' fees and disbursements of the DIP Secured Parties incurred both (x) before the Petition Date, which amounts shall be deemed approved and not required to comply with U.S. Trustee fee guidelines, and (y) on or after the Petition Date, subject to the notice provisions set forth in paragraph 8(e) herein. The Debtor shall observe and comply with all of the financing, reporting and performance covenants and conditions set forth in the DIP Credit Agreement.

(b) **Interim Authorization to Borrow/and or Guarantee**. To enable the Debtor to continue to preserve the value of its estate during the period prior to entry of the Final Order (the "**Interim Period**") and subject to the terms and conditions of this Interim Order, upon the execution of the DIP Credit Agreement and the other DIP Credit Documents, the Debtor is hereby authorized to borrow the Initial DIP Loans up to a total committed amount of $5,000,000 under the DIP Credit Documents.

(c) **Conditions Precedent**. The DIP Lenders shall have no obligation to make any loan or advance under the DIP Credit Agreement during the Interim Period unless the conditions precedent to making such loan under the DIP Credit Agreement have been satisfied in full or waived in writing (which may be via email) by the DIP Lenders in their respective sole discretion.

(d) **DIP Liens**. In order to secure the DIP Obligations, effective and automatically perfected immediately upon entry of this Interim Order, pursuant to sections 361,

362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, subject to the Carve Out, the DIP Agent is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens on (collectively, the "**DIP Liens**") all real, personal, and mixed property (including equity interests), whether now existing or hereafter arising and wherever located, tangible and intangible, of the Debtor's estate, including, without limitation, all inventory, accounts receivable, general intangibles, contracts, chattel paper, owned real estate, real property leaseholds, governmental approvals, licenses and permits, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, securities, partnership interests, membership interests in limited liability companies, and capital stock of any subsidiary of the Debtor, including, without limitation, the products and proceeds thereof (the "**DIP Collateral**") and including (i) subject to entry of a Final Order granting such relief, any avoidance actions arising under Chapter 5 of the Bankruptcy Code or applicable state law equivalents (such actions, collectively, "**Avoidance Actions**") and commercial tort claims; and (ii) subject to entry of a Final Order granting such relief, the Debtor's rights under sections 506(c) and 550 of the Bankruptcy Code and the proceeds thereof. Notwithstanding the foregoing, the DIP Collateral shall not include (x) any contract or license under which the granting of the DIP Liens thereon would constitute a breach or termination thereof other than to the extent such breach or termination would be rendered ineffective pursuant to applicable law (including applicable state law or the Bankruptcy Code) but shall, in any event, include the proceeds of such contracts and licenses or, (y) subject to the terms and conditions of paragraph 9(b) hereof, the funds held in the Funded Reserve Account (as defined below).

(e) **DIP Lien Priority**. The DIP Liens securing the DIP Obligations are valid, automatically perfected, and non-avoidable, and the DIP Agent shall have, subject to the Carve Out, (i) pursuant to section 364(c)(2) of the Bankruptcy Code, first-priority perfected security interests, liens, and mortgages on all DIP Collateral not subject to valid, perfected, enforceable, and non-avoidable security interests, liens, or mortgages in existence on the Petition Date; (ii) pursuant to section 364(c)(3) of the Bankruptcy Code, junior security interests, liens, and mortgages only with respect to DIP Collateral that is subject to valid Permitted Liens; and (iii) pursuant to section 364(d), first-priority, priming perfected security interests, liens, and mortgages on all other DIP Collateral, including the Prepetition Collateral. For the avoidance of doubt, the DIP Liens shall be senior to the Prepetition Liens and junior to the Carve Out. Other than as set forth herein or in the DIP Credit Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in this Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in this Chapter 11 Case or any Successor Case, upon the conversion of this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of this Chapter 11 Case or any Successor Case. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

(f) **Enforceable Obligations**. The DIP Credit Documents shall constitute and evidence the valid and binding obligations of the Debtor, which obligations shall be enforceable against the Debtor, its estate, and any successors thereto and its creditors or representatives thereof, in accordance with their terms.

(g) **Protection of DIP Agent and Other Rights**. From and after the Petition Date, the Debtor shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Credit Agreement and this Interim Order and in strict compliance with the Approved Budget (subject to any Permitted Variance as defined below).

(h) **Superpriority Administrative Claim Status**. Upon entry of this Interim Order, the DIP Lenders are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed super-priority administrative expense claims in this Chapter 11 Case and any Successor Case (collectively, the "**DIP Superpriority Claims**" and, together with the DIP Liens, the "**DIP Protections**") for all DIP Obligations, subject only to the Carve Out: (i) having priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in this Chapter 11 Case and any Successor Case, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order granting such relief), 507(a), 507(b), 546(c), 546(d), 552(b) (subject to entry of the Final Order granting such relief), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (ii) which shall at all times be senior to the rights of the Debtor and its estate, and any subsequent trustee or other estate representative to the extent permitted by law; provided that the DIP Superpriority Claims shall not be payable from the proceeds of Avoidance Actions or commercial tort claims pending entry of a Final Order granting such relief.

3. **Authorization to Use Proceeds of DIP Facility**. Pursuant to the terms and conditions of this Interim Order, the DIP Credit Agreement, and the other DIP Credit Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtor is

authorized to use the advances under the DIP Credit Agreement during the period commencing immediately after the entry of the Interim Order and terminating upon the occurrence of a DIP Termination Event (as defined below) and the termination of the DIP Credit Agreement in accordance with its terms and subject to the provisions hereof. The Debtor and the DIP Agent may agree in writing (which may be via email) to modify the Approved Budget in their discretion at any time that the DIP Facility remains outstanding without further notice or approval by this Court.

4. **DIP Roll-Up Loans**. Upon entry of this Interim Order and subject to the reservation of rights in paragraph 12 below, without any further action by the Debtor or any other party, and as a condition to the provision of liquidity under the DIP Facility, the Interim Roll-Up Loans are approved and the Interim Roll-Up Loans shall be replaced and refinanced and shall constitute DIP Obligations.

5. **Access to Records**. The Debtor shall provide the DIP Secured Parties' advisors with all reporting and other information required to be provided to the DIP Secured Parties under the DIP Credit Documents. In addition to, and without limiting, whatever rights to access the DIP Secured Parties have under the DIP Credit Documents, upon reasonable notice to counsel to the Debtor (email being sufficient), at reasonable times during normal business hours, the Debtor shall permit representatives, professionals, agents, and employees of the DIP Secured Parties to have reasonable access to (i) inspect the Debtor's assets, and (ii) reasonably requested information (including historical information and the Debtor's books and records) and personnel, including regularly scheduled meetings as mutually agreed with senior management of the Debtor and other advisors of the Debtor (during normal business hours), and the DIP Secured Parties shall be provided with access to all information they shall reasonably request, excluding any information

for which confidentiality is owed to third parties, information subject to attorney-client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law.

6. **Authorization to Use Cash Collateral**. The Debtor is hereby authorized to use Cash Collateral (including, without limitation, after the repayment in full of the DIP Obligations) pursuant to the terms of this Interim Order and the DIP Credit Documents, as applicable, and in accordance with the Approved Budget (subject to the Permitted Variances), subject to paragraph 19 herein. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtor or its estate outside the ordinary course of business, or the Debtor's use of any Cash Collateral (including, without limitation, proceeds of the Prepetition Collateral), except as expressly permitted in this Interim Order, the DIP Credit Agreement, and the other DIP Credit Documents, and in accordance with the Approved Budget (subject to the Permitted Variances).

7. **Post-Petition Lien Perfection**. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and Adequate Protection Liens (as defined below) without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens or the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent or the Prepetition Agent, as applicable, may, in its sole discretion, file such financing statements, mortgages, notices of liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded at the time and on the

date of the commencement of this Chapter 11 Case. The Debtor shall execute and deliver to the DIP Agent and the Prepetition Agent all such financing statements, mortgages, notices, and other documents as the DIP Agent or the Prepetition Agent, as applicable may reasonably request to evidence, confirm, validate, or perfect, or to ensure the contemplated priority of, the DIP Liens or the Adequate Protection Liens granted pursuant hereto. The DIP Agent and the Prepetition Agent, in each of their sole discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file or record financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtor has real or personal property, and in such event, the recording officer shall be authorized to file or record such copy of this Interim Order.

8. **Adequate Protection**. The Prepetition Secured Parties shall receive the following as adequate protection against any Diminution in Value of such Prepetition Secured Party's interest in the Prepetition Collateral caused by the imposition of the automatic stay or the Debtor's use, sale, or disposition of the Prepetition Collateral during this Chapter 11 Case (collectively, the "**Adequate Protection Package**"):

(a) *Adequate Protection Liens for the Prepetition Secured Parties.* The Prepetition Agent, for the benefit of the Prepetition Secured Parties, is hereby granted, pursuant to sections 105, 361, 363(e), and 364(d)(1) of the Bankruptcy Code, continuing, valid, binding, enforceable, and perfected post-petition security interests in and liens on the DIP Collateral (the "**Adequate Protection Liens**"). The Adequate Protection Liens shall be subject to the Carve Out and the Permitted Liens as set forth in this Interim Order and shall be (i) with respect to the Prepetition Collateral, junior to the DIP Liens and senior to the Prepetition Liens, and (ii) otherwise junior only to the DIP Liens.

(b) Except as provided herein or in the DIP Credit Agreement, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter arising in this Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in this Chapter 11 Case or any Successor Case or upon the dismissal of any of this Chapter 11 Case or any Successor Case. The Adequate Protection Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

(c) *Allowed Superpriority Claim of the Prepetition Secured Parties.* As further adequate protection of the interests of the Prepetition Secured Parties against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Secured Parties are hereby granted allowed super-priority administrative expense claims in this Chapter 11 Case and any Successor Case against the Debtor under sections 503 and 507(b) of the Bankruptcy Code (the "**507(b) Claim**").

(d) Subject to the relative priorities set forth in subparagraph (c) of this paragraph 8, the 507(b) Claim shall have priority over all other administrative expense claims and unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order granting such relief), 507(a), 507(b), 546(c), 546(d), 552(b) (subject to entry of the Final Order granting such relief), 726, 1113, and 1114, and any other provision of the Bankruptcy Code; provided that the 507(b) Claim shall not be payable from the proceeds of Avoidance Actions or commercial tort claims pending entry of a Final Order granting such relief. The 507(b) Claim shall

be subject to the Carve Out and the Permitted Liens as set forth in this Interim Order and shall be junior only to the DIP Superpriority Claims.

(e) *Adequate Protection Payments.* As further adequate protection of the interests of the Prepetition Secured Parties, the Debtor shall make the following periodic adequate protection payments to the Prepetition Secured Parties in cash (without the need for the filing of a formal fee application where otherwise applicable or comply with U.S. Trustee fee guidelines) (the "**Adequate Protection Payments**"): to the Prepetition Secured Parties (such parties also being the DIP Secured Parties in this Chapter 11 Case), reasonable and documented legal fees and out-of-pocket expenses of the Prepetition Agent, Morrison & Foerster LLP, and local Delaware bankruptcy counsel Potter Anderson & Corroon LLP, in each case incurred or arising before, on, or after the Petition Date, in accordance with this Interim Order. A summary invoice for such fees and expenses shall be provided to the Debtor, the U.S. Trustee, and counsel for the Creditors' Committee (if any) (which may be via email) (collectively, the "**Fee Notice Parties**"). After delivery of a summary invoice, the Fee Notice Parties shall have ten (10) calendar days to raise an objection thereto with respect to any of the fees, costs, and expenses incurred or arising on or after the Petition Date (the "**Fee Objection Period**"). Any objections raised by the Fee Notice Parties with respect to the Debtor's payment of such amounts must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional. If no objection is made by any of the Fee Notice Parties within the Fee Objection Period, then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtor, and in no event later than three (3) business days after expiration of the Fee Objection Period. If an objection is raised by any of the Fee Notice Parties within the Fee Objection Period, such objection shall be subject to resolution by the Court.

Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtor, without further order of the Court following the expiration of the Fee Objection Period. Notwithstanding the foregoing, the Debtor is authorized and directed to pay within two (2) calendar days of the date of this Interim Order, the Adequate Protection Payments incurred on or prior to the date of this Interim Order without the need for any of the foregoing professionals to first deliver a summary invoice or other supporting documentation to the Fee Notice Parties (other than the Debtor). For the avoidance of doubt, any and all fees, costs, and expenses paid prior to the Petition Date by the Debtor to the foregoing professionals are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement, or any similar form of recovery by the Prepetition Secured Parties or any other person.

(f) *Payment of Certain Interest.* As further adequate protection of the interests of the Prepetition Secured Parties, the Debtor shall pay the Prepetition Secured Parties, in kind, an amount equal to interest accruing upon the Prepetition Obligations at the default rate of interest as provided in and otherwise subject to the terms of the Prepetition Credit Documents in accordance with the Approved Budget.

(g) *Adequate Protection Reservation of Rights.* The receipt by the Prepetition Secured Parties of the Adequate Protection Package shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Notwithstanding any other provision hereof, the grant of the Adequate Protection Package to the Prepetition Secured Parties pursuant hereto is without prejudice to the rights of the Prepetition Secured Parties to seek modification of the grant of the Adequate Protection Package provided hereby so as to provide

different or additional adequate protection and without prejudice to the right of the Debtor or any other party in interest to contest any such modification.

9. **Carve Out**.

(a) The rights and claims of the DIP Secured Parties, including the DIP Obligations, DIP Liens, and DIP Superpriority Claims, and the Prepetition Secured Parties, including the Prepetition Obligations, Adequate Protection Liens, and 507(b) Claim, shall be subject and subordinate in all respects to the payment of the Carve Out. As used in this Interim Order, "**Carve Out**" means the following expenses: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed $25,000 (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all (A) unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of Raymond James & Associates, Inc.) (together, the "**Allowed Debtor Professional Fees**") incurred by persons or firms retained by the Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the "**Debtor Professionals**") and (B) unpaid fees and expenses (the "**Allowed Committee Professional Fees**" and together with the Allowed Debtor Professional Fees, collectively, the "**Allowed Professional Fees**") incurred by persons or firms retained by any statutory committees appointed in this Chapter 11 Case, including the Creditors' Committee (if appointed) (each, a "**Committee**") pursuant to section 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before or on the first calendar day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below),

whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (these clauses (i) through (iii), the "**Pre-Carve Out Trigger Amounts**"); and (iv) Allowed Debtor Professional Fees not to exceed $300,000 and Allowed Committee Professional Fees not to exceed $50,000, incurred after the first calendar day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**," and together with the Pre-Carve Out Trigger Amounts, the "**Carve Out Amount**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtor, its restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below) and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) *Carve Out Funded Reserve*. For the period prior to the delivery of the Carve Out Trigger Notice, the Debtor shall fund from the DIP Facility or cash on hand into a segregated trust account (the "**Funded Reserve Account**") held by counsel for the Debtor for the benefit of Professional Persons the amounts set forth in the Approved Budget for Professional Persons. The Debtor shall use funds held in the Funded Reserve Account exclusively to pay Allowed Professional Fees and other obligations included within the Carve Out in accordance with the Approved Budget as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of the Court; provided that when all Allowed Professional Fees provided for in the Approved Budget that have funded into the Funded Reserve Account have been paid, any unused funds remaining in the Funded Reserve

Account for those periods shall revert to the DIP Agent for the benefit of the DIP Lenders. Funds transferred to the Funded Reserve Account shall be subject to the DIP Liens and DIP Superpriority Claims granted hereunder solely to the extent of such reversionary interest; provided, that, for the avoidance of doubt, such liens and claims shall be subject in all respects to the Carve Out.

(c) *Carve Out Funding*. Notwithstanding anything in the DIP Credit Documents to the contrary, on the day on which a Carve Out Trigger Notice is validly delivered (the "**Carve Out Trigger Notice Date**"), the Carve Out Trigger Notice shall constitute a demand to the Debtor to utilize all cash on hand as of such date and any available cash thereafter held by the Debtor to fund the Funded Reserve Account an amount equal first to the then-unpaid amounts of the Allowed Professional Fees for the period prior to the Carve Out Trigger Notice Date and then the Post-Carve Out Trigger Notice Cap. All funds in the Funded Reserve Account shall be used to pay the Pre-Carve Out Trigger Amounts, but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to pay the obligations set forth in the Post-Carve Out Trigger Notice Cap, and then, to the extent the Funded Reserve Account has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Obligations have been terminated, in which case any such excess shall be paid to the Debtor. Further, notwithstanding anything to the contrary in the Interim Order, disbursements by the Debtor from the Funded Reserve Account shall not constitute DIP Loans or increase or reduce the DIP Obligations.

(d) The failure of the Funded Reserve Account to satisfy in full the Allowed Professional Fees in full shall not affect the priority of the Carve Out, which shall be senior to all DIP Obligations and Prepetition Obligations; *provided* that, to the extent that the Funded Reserve Account is actually funded, the Carve Out shall be reduced by such funded amount dollar-for-

dollar. In no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Funded Reserve Account, or any of the terms of the Interim Order be construed as a cap or limitation on the amount of the Allowed Debtor Professional Fees or the Allowed Committee Professional Fees (if any) due and payable by the Debtor or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise). Any payment or reimbursement made prior to the occurrence of the Carve Out Trigger Notice Date in respect of any Allowed Professional Fees shall not reduce the Post-Carve Out Trigger Notice Cap.

(e) None of the DIP Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with this Chapter 11 Case or any Successor Case. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Persons or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

10. **Limitation on Use of the DIP Facility, the DIP Collateral, and the Prepetition Collateral (Including Cash Collateral)**. Notwithstanding anything herein or in any other order of this Court to the contrary, the DIP Facility (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve Out), the DIP Collateral, the Prepetition Collateral, any Cash Collateral or the Carve Out (other than the Investigation Budget Cap (as defined below)) may not be used to (a) investigate, analyze, commence, prosecute, threaten, litigate, object to, contest or challenge in any manner or raise any defenses to the validity, perfection, priority, extent or enforceability of any amount due under the DIP Credit Documents, the Prepetition Credit Documents or the liens or claims granted under this Interim Order, the DIP Credit Documents or the Prepetition Credit Documents, including the Prepetition Liens and the

DIP Liens, or any mortgage, security interest or lien with respect thereto, or any other rights or interests or replacement liens with respect thereto or any other rights or interests of any of the DIP Secured Parties or the Prepetition Secured Parties, (b) investigate, analyze, or assert any claims and defenses, including any Avoidance Actions, or any other causes of action against the DIP Secured Parties or the Prepetition Secured Parties or, in each case, their respective agents, affiliates, subsidiaries, directors, officers, employees, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agent's or the Prepetition Agent's assertion, enforcement or realization on the Prepetition Collateral or the DIP Collateral, in accordance with the DIP Credit Documents, the Prepetition Credit Documents, or this Interim Order, the exercise of rights by the DIP Secured Parties or the Prepetition Secured Parties once an Event of Default (as defined below) has occurred and is continuing or any other rights or interest of any of the DIP Secured Parties or the Prepetition Secured Parties following the occurrence of a DIP Termination Event and after the Remedies Notice Period (as defined below), (d) seek to subordinate (other than to the Carve Out or as set forth in this Interim Order) or recharacterize the DIP Obligations or any of the Prepetition Obligations or to disallow or avoid any claim, mortgage, security interest, lien or replacement lien or payment thereunder, (e) seek to modify any of the rights granted to the DIP Secured Parties or any of the Prepetition Secured Parties hereunder or under the DIP Credit Documents or the Prepetition Credit Documents, in the case of each of the foregoing clauses (a) through (e), without such party's prior written consent, (f) pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of this Court or otherwise permitted under the DIP Credit Documents, or (g) pay Allowed Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, the Creditors' Committee (if any), in connection with any of the foregoing. The "**Investigation**

Budget Cap" means a cap of $25,000 with respect to Allowed Professional Fees to be incurred by the Creditors' Committee (if any) under the investigation budget.

11. **Payment of Compensation**. Nothing herein shall be construed as consent to the allowance of any Allowed Professional Fees, or shall affect the rights of the DIP Lenders to object to the allowance and payment of such fees and expenses or to permit the Debtor to pay any such amounts not set forth in the Approved Budget. Further, nothing herein shall be construed to obligate the DIP Lenders to pay any professional fees or to assure that the Debtor has sufficient funds on hand to pay any professional fees.

12. **Effect of Stipulations**.

(a) *Generally*. The admissions, stipulations, agreements, releases, and waivers set forth in this Interim Order (collectively, the "**Prepetition Lien and Claim Stipulations**") are and shall be binding on the Debtor. In addition, the Prepetition Lien and Claim Stipulations shall be binding on any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Creditors' Committee (if appointed), unless, and solely to the extent that, (i) a party in interest with standing and requisite authority (other than the Debtor, as to which any Challenge (as defined below) is irrevocably waived and relinquished) has timely filed the appropriate pleadings and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 12) challenging the Prepetition Lien and Claim Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "**Challenge**") by no later than seventy-five (75) calendar days from the entry of this Interim Order (the "**Challenge Deadline**" and, such

period, the "**Challenge Period**"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Secured Parties (without additional notice to or approval from this Court), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline; and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. Notwithstanding the foregoing, if a chapter 11 trustee is appointed or this Chapter 11 Case is converted to chapter 7 prior to the expiration of the Challenge Deadline, the chapter 11 trustee or chapter 7 trustee, as applicable, shall have until the later of the Challenge Deadline or the tenth (10th) day after the appointment of the chapter 11 trustee or the conversion of this Chapter 11 Case to chapter 7, as applicable, to commence a Challenge, subject to any further extension by order of the Court for cause. The timely filing of a motion seeking standing to file a Challenge before the termination of the Challenge Period shall toll the Challenge Deadline only as to the party that timely filed such standing motion and only with respect to the specific Challenges identified in such standing motion until such motion is resolved or adjudicated by the Court. Any pleadings, including, but not limited to, the complaint, filed in any Challenge proceeding shall set forth with specificity the basis for such Challenge (and any Challenge not so specified prior to the Challenge Deadline shall be deemed forever waived, released and barred). The Court may fashion any appropriate remedy following a successful Challenge. For the avoidance of doubt, any trustee appointed or elected in this Chapter 11 Case shall, until the expiration of the Challenge Period, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph 12 (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor's estate), be deemed to be a party other than the Debtor

and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtor in this Interim Order. For the avoidance of doubt, as to the Debtor, upon entry of this Interim Order, all Challenges, and any right to assert any Challenge, are hereby irrevocably waived and relinquished as of the Petition Date, and the Debtor's Stipulations shall be binding in all respects on the Debtor irrespective of the filing of any Challenge.

(b) *Binding Effect*. To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Stipulations, then, without further notice, motion, or application to, order of, or hearing before this Court and without the need or requirement to file any proof of claim, (x) the obligations in respect of the Prepetition Credit Documents shall constitute allowed claims, not subject to any claims and defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law), for all purposes in this Chapter 11 Case and any Successor Case; (y) the Prepetition Liens shall not be subject to any other or further Challenge, including, without limitation, any claims and defenses, which shall be deemed to be forever waived and barred, and all parties in interest shall be enjoined from seeking to exercise the rights of the Debtor's estate, including any successor thereto (including any estate representative or a trustee, whether such trustee is appointed or elected prior to or following the expiration of the Challenge Period); and (z) the Prepetition Lien

and Claim Stipulations shall, pursuant to this Interim Order, be of full force and effect and forever binding upon the applicable Debtor's estate and all creditors, interest holders and other parties in interest, including a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtor's estate, in this Chapter 11 Case and any Successor Case.

(c) Notwithstanding anything to the contrary herein, if any such Challenge proceeding is properly and timely commenced, the Prepetition Lien and Claim Stipulations shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (b) above, except to the extent that any of such Prepetition Lien and Claim Stipulations is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (b) above. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition Credit Documents in defending themselves in any such proceeding as adequate protection, except if a Challenge results in a determination that the entirety of the Prepetition Liens are invalid. Nothing in this Interim Order vests or confers on any person, including the Creditors' Committee (if any), standing or authority to pursue any cause of action belonging to the Debtor or its estate, including, without limitation, Challenges with respect to the Prepetition Lien and Claim Stipulations, and all rights to object to such standing are expressly reserved.

13. **Approved Budget**. Attached to this Interim Order as **Exhibit B** is a 13-week budget approved by the DIP Agent, which sets forth, among other things, projected cash receipts and cash disbursements. Such budget shall be updated from time to time as set forth in the DIP Credit Agreement. The Debtor shall at all times comply with the Approved Budget (subject to the

Permitted Variances) and shall further comply with the other reporting requirements set forth in the DIP Credit Agreement. As of any date of determination, the budget or the updated budget that has most recently become the "Approved Budget" in accordance with and as defined in the DIP Credit Agreement shall be referred to herein as the "Approved Budget." Until any updated budget has become the Approved Budget, the Debtor shall be subject to and be governed by the terms of the Approved Budget then in effect (subject to Permitted Variances). "**Permitted Variance**" means, with respect to the Approved Budget, tested on a four (4)-week rolling basis, cumulative actual expenses for the most recently completed week to be not more than 115% of cumulative budgeted expenses for the period ending with the most recently completed week; *provided* that if for any four (4)-week rolling period, actual cash expenditures exceed expected cash expenditures, the Permitted Variance for cash expenditures for such testing period will be deemed to have been met if the cumulative actual net cash flow for such period is equal to or greater than the cumulative expected net cash flow for such period. For the avoidance of doubt, documented fees and out-of-pocket expenses paid to the DIP Secured Parties or their respective professionals shall not be included in the foregoing variance testing; *provided*, *however*, documented fees and out-of-pocket expenses paid to the Debtor's professionals or any professionals retained by any Committee formed during this Chapter 11 Case shall be included in the foregoing variance testing.

14. **Section 506(c) Claims**. Upon entry of the Final Order, no costs or expenses of administration that have been or may be incurred in this Chapter 11 Case or any Successor Case at any time may be charged against the DIP Secured Parties or the Prepetition Secured Parties, or any of their respective claims, or the DIP Collateral or Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent or Prepetition Agent, as applicable. Nothing contained in this Interim Order shall be deemed

a consent by the DIP Agent or the Prepetition Agent, as applicable, to any charge, lien, assessment, or claim against the DIP Collateral or Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise, and no consent shall be implied from any action, inaction, or acquiescence by the DIP Secured Parties or Prepetition Secured Parties, as applicable.

15. **Collateral Rights**. Unless the DIP Agent has provided its prior written consent or all DIP Obligations have been paid in full in cash (or will be paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below) and all commitments to lend have terminated:

(a) The Debtor shall not seek entry, in this Chapter 11 Case, or in any Successor Case, of any order that authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status that is senior or *pari passu* to those granted to the DIP Agent, respectively, pursuant to this Interim Order, unless such credit or indebtedness is sufficient to pay all of the DIP Obligations in full in cash; and

(b) The Debtor shall not consent to relief from the automatic stay by any persons other than the DIP Agent to proceed against any DIP Collateral having a fair market value in excess of $25,000 without the express written consent of the DIP Agent.

16. **Termination Events**. Subject to any obligations under the Carve Out and any applicable grace period under the DIP Credit Documents and this Interim Order and the Remedies Notice Period, (i) the DIP Obligations shall accelerate and become immediately due and payable in full, and (ii) the Debtor's right to use Cash Collateral shall immediately cease, in each case without further notice or action by the Court following the earliest to occur of any of the following unless waived in writing by the DIP Agent or the Prepetition Agent, as applicable (each a

"**Termination Event**"): (i) the occurrence of any Event of Default (as defined below); (ii) the Debtor's failure to comply with any provision of this Interim Order (including, without limitation, the Approved Budget (and the Permitted Variances) and the Milestones); (iii) except as set forth below, the occurrence of the Maturity Date (as defined in the DIP Credit Agreement); (iv) the entry of an order authorizing the use of DIP Collateral or Cash Collateral or financing under Bankruptcy Code section 364 or the filing by the Debtor of a motion seeking such authority, in each case without the consent of the DIP Agent or the Prepetition Agent, as applicable; (v) dismissal or conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (vi) termination, modification, or reversal of this Interim Order without the consent of the DIP Agent or the Prepetition Agent, as applicable; and (vii) the filing of a plan or disclosure statement that is not approved by the DIP Agent or Prepetition Agent, as applicable. Notwithstanding the foregoing, subject to paragraph 19 below, the Debtor's authority to use Cash Collateral shall continue following the repayment of the DIP Obligations in full if the Prepetition Agent consents to a form of Approved Budget for such period.

17. **Disposition of Collateral**. It shall be an Event of Default for the Debtor to sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral outside the ordinary course of business, without the prior written consent of the DIP Agent (and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent or an order of this Court), except as provided in the DIP Credit Agreement and this Interim Order.

18. **Events of Default**. The occurrence of an "Event of Default" or "Default" under the DIP Credit Agreement shall constitute an event of default under this Interim Order, unless expressly waived in writing by the DIP Agent, and such Events of Default or Defaults are explicitly incorporated by reference into this Interim Order (collectively, the "**Events of Default**"). The

failure of the Debtor to satisfy a Milestone (as defined in and set forth in Schedule 8.22 to the DIP Credit Agreement) (each, a "**Bankruptcy Milestone**"), shall constitute an Event of Default.

19. **Rights and Remedies Upon a Termination Event**.

(a) The Debtor shall promptly provide notice to counsel to the DIP Secured Parties, the U.S. Trustee, and counsel to the Creditors' Committee (if any) of the occurrence of any Termination Event. Upon the occurrence and during the continuation of a Termination Event (regardless of whether the Debtor has given the notice described in the previous sentence), and following the giving of not less than five (5) business days' prior written notice of such occurrence by the DIP Agent, which may be via email, to the Debtor and its counsel, counsel for the Creditors' Committee, if any, and the U.S. Trustee (such notice, the "**Remedies Notice**," and such period, the "**Remedies Notice Period**"), (i) the DIP Secured Parties shall be entitled to exercise any of their rights and remedies against the DIP Collateral available to them under this Interim Order, the DIP Credit Documents, and applicable non-bankruptcy law in accordance with the DIP Credit Documents, subject to the Carve-Out; (ii) the Prepetition Secured Parties may exercise any rights and remedies to satisfy the Prepetition Obligations and obligations with respect to the Adequate Protection Package, subject to the DIP Obligations, the DIP Superpriority Claims, the Permitted Liens, and the Carve Out, in accordance with the Prepetition Credit Documents; and (iii) any obligation otherwise imposed on the DIP Secured Parties to provide any loan or advance to the Debtor pursuant to the DIP Credit Documents shall immediately be terminated. During the Remedies Notice Period, the Debtor shall continue to have the right to use Cash Collateral in accordance with the terms of this Interim Order, solely to fund the Carve Out and pay necessary expenses to avoid immediate and irreparable harm to the Debtor's estate (subject to the Approved Budget and the Permitted Variances), or as otherwise agreed to in writing by the DIP Agent or the

Prepetition Agent, as applicable. Nothing in this Interim Order shall limit the ability of any party to immediately exercise rights and remedies with respect any non-Debtor.

(b) Notwithstanding the immediately preceding subparagraph, immediately following the giving of notice by the DIP Agent of the occurrence of a DIP Termination Event, and subject to the full funding of the Carve Out: (i) the Debtor shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lenders as provided in the DIP Credit Agreement and this Interim Order, and (ii) the DIP Lenders shall continue to apply such proceeds in accordance with the provisions of this Interim Order and of the DIP Credit Agreement. During the Remedies Notice Period, the Debtor and/or any other party in interest shall be entitled to seek an emergency hearing to consider (x) whether a DIP Termination Event has occurred and (y) any other appropriate relief. Notwithstanding the foregoing and for the avoidance of doubt, upon the expiration of the Remedies Notice Period, unless this Court has entered an order to the contrary, the Debtor's right to use Cash Collateral and the proceeds of the DIP Loans shall immediately cease, and the Prepetition Secured Parties and the DIP Secured Parties shall have the rights set forth in paragraph (a) immediately above, without the necessity of seeking relief from the automatic stay or further notice or order.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the DIP Secured Parties' rights to seek any other or supplemental relief in respect of the DIP Secured Parties, as provided in the DIP Credit Agreement or the other DIP Credit Documents.

20. **Payments Free and Clear**. Any and all payments or proceeds remitted to the DIP Secured Parties or Prepetition Secured Parties (subject to the reservation of rights in paragraph 12 hereof) pursuant to the provisions of this Interim Order, the DIP Credit Documents or any subsequent order of the Court shall be irrevocably received free and clear of any claim, charge,

assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, Bankruptcy Code sections 506(c) (subject to a Final Order granting such relief) or 552(b) (subject to a Final Order granting such relief), whether asserted or assessed by, through or on behalf of the Debtor.

21. **Indemnification**. The Debtor shall indemnify and hold harmless the DIP Agent, the DIP Lenders, and each of their respective affiliates and each of their respective officers, directors, employees, agents, advisors, attorneys and representatives (collectively, the "**Indemnified Parties**"), from and against all reasonable and documented out-of-pocket costs, expenses, liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility, and such other liabilities as set forth in, in accordance with and subject to the limitations of the DIP Credit Documents and the Approved Budget; *provided* that no Indemnified Parties will be indemnified for any losses, claims, damages, liabilities or related expenses to the extent determined by a final, nonappealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the gross negligence, willful misconduct, or fraud of such Indemnified Parties.

22. **Proofs of Claim**. Neither the DIP Agent nor the DIP Lenders will be required to file proofs of claim in this Chapter 11 Case or any Successor Case in order to assert claims arising under the DIP Credit Documents. Neither the Prepetition Agent nor the Prepetition Lenders shall be required to file proofs of claim in this Chapter 11 Case or any Successor Case in order to assert claims on behalf of themselves or the Prepetition Secured Parties on account of the obligations arising under the Prepetition Credit Documents, including, without limitation, any principal, unpaid interest, fees, expenses, and other amounts under the Prepetition Credit Documents; *provided*, however, the Prepetition Agent is permitted (but shall not be required) to file one master

proof of claim in this Chapter 11 Case on account of the obligations arising under the Prepetition Credit Documents, as applicable.

23. **Other Rights and Obligations**.

(a) *Good Faith Under Section 364(e) of the Bankruptcy Code. No Modification or Stay of this Interim Order*. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, amended, or vacated by a subsequent order of this or any other Court, the DIP Agent and the DIP Lenders are entitled to all the benefits and protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment, or vacatur shall not affect the validity and enforceability of any advances made pursuant to this Interim Order or the liens or priority authorized or created hereby. Any claims, liens, or DIP Protections granted to the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of such reversal, modification, amendment, or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties shall be entitled to all of the rights, remedies, privileges, and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Credit Agreement are made in reliance on this Interim Order, the obligations owed to the DIP Secured Parties prior to the effective date of any reversal or modification of this Interim Order cannot, as a result of any subsequent order in this Chapter 11 Case or in any Successor Case, be subordinated, lose their lien priority or super-priority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Secured Parties under this Interim Order and/or the DIP Credit Documents.

(b) *Binding Effect*. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties, the Debtor, and each of their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) whether in this Chapter 11 Case, in any Successor Case, or upon dismissal of any such chapter 11 or chapter 7 case.

(c) *No Waiver*. The failure of the DIP Secured Parties to seek relief or otherwise exercise their rights and remedies under the DIP Credit Documents, the DIP Facility, this Interim Order, or otherwise, as applicable, shall not constitute a waiver of the DIP Secured Parties' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Secured Parties to (i) request conversion of this Chapter 11 Case to a case under chapter 7, dismissal of this Chapter 11 Case, or the appointment of a trustee in this Chapter 11 Case; (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization; or (iii) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) the DIP Secured Parties may have pursuant to this Interim Order, the DIP Credit Documents, or applicable law. Nothing in this Interim Order shall interfere with the rights of any party with respect to any non-Debtor.

(d) *No Third-Party Rights*. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

(e) *No Marshaling*. Subject to entry of the Final Order granting such relief, the DIP Secured Parties and Prepetition Secured Parties, as applicable, shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral and Prepetition Collateral, as applicable.

(f) *Section 552(b)*. In light of the DIP Secured Parties' agreement to subordinate their liens and super-priority claims to the Carve Out and the Prepetition Secured Parties' consent to use of Cash Collateral, and subject to entry of the Final Order granting such relief, the DIP Secured Parties and the Prepetition Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply with respect to proceeds, product, offspring, or profits of any of the DIP Collateral or Prepetition Collateral, as applicable.

(g) *Amendment*. The Debtor and the DIP Agent may from time to time amend, restate, amend and restate, modify, waive, or supplement any provision of the DIP Credit Documents, without further order of this Court if such amendment, restatement, amendment and restatement, modification, waiver, or supplement is not material or is necessary to conform the terms of the DIP Credit Documents; *provided* that notice of the foregoing shall be provided to the U.S. Trustee and the Creditors' Committee (if any). Any material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Credit Documents (as determined by the DIP Agent in its reasonable discretion) must be on notice to the U.S. Trustee and the Creditors' Committee (if any), who shall have five (5) business days from the date of such notice within which to object in writing to such amendment, restatement, amendment and restatement, modification, waiver, or supplement. If the U.S. Trustee or the Creditors' Committee (if any) timely objects to any such amendment, restatement, amendment and restatement,

modification, waiver, or supplement to the DIP Credit Documents, such amendment, restatement, amendment and restatement, modification, waiver, or supplement shall only be permitted pursuant to an order of this Court (which the Debtor, the DIP Agent, and the Prepetition Agent agree may be on shortened notice). For the avoidance of doubt, the waiver or extension of a Bankruptcy Milestone or the delivery of an Updated Budget (as defined in the DIP Credit Agreement) shall not constitute a material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Credit Documents.

(h) *Credit Bidding*. In connection with any sale process authorized by the Court, (i) the DIP Agent (or its assignee, as applicable) may credit bid (each a "**Credit Bid**") up to the full amount of the applicable outstanding DIP Obligations, in each case including any accrued interest and expenses, as provided for in section 363(k) of the Bankruptcy Code in any sale of any DIP Collateral, and (ii) the Prepetition Agent (or its assignee, as applicable) may Credit Bid up to the full amount of its outstanding Prepetition Obligations, including any accrued interest and expenses, as provided for in section 363(k) of the Bankruptcy Code in any sale of any Prepetition Collateral, in each case, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, in each case, without further order from this Court authorizing the same. For the avoidance of doubt, the DIP Roll-Up Loans and the Prepetition Obligations shall remain subject to the reservation of rights in paragraph 12 hereof notwithstanding any credit bid of the DIP Roll-Up Loans or the Prepetition Obligations.

(i) *No Subrogation*. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the DIP Loans be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted in

favor of, or conferred upon, the DIP Secured Parties by the terms of this Interim Order, the other DIP Credit Documents, or otherwise at law or contract or in equity, unless and until such time as all of the DIP Loans have been indefeasibly paid in full in cash on a final basis and all lending commitments have been terminated under the DIP Facility and the DIP Secured Parties have received a full release in connection therewith.

(j) *Rights Preserved*. Other than as expressly set forth in this Interim Order, any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Secured Parties and the Prepetition Secured Parties are preserved.

24. **Releases**. Subject to the rights and limitations set forth in paragraph 12 with respect to the DIP Roll-Up Loans and the Prepetition Secured Parties in their capacities as such, the Debtor, for itself and its successors, assigns, parents, subsidiaries, affiliates, predecessors, employees, agents, heirs and executors, as applicable, hereby fully and unconditionally releases the DIP Secured Parties, the Prepetition Secured Parties, each solely in their capacity as such, and each of their respective directors, officers, employees, subsidiaries, affiliates, attorneys, financial advisors, investment bankers, agents, representatives, successors and assigns (collectively, the "**Released Parties**") from any and all claims, causes of action, costs or demands of whatever kind or nature, whether known or unknown, liquidated or unliquidated, fixed or contingent, asserted or unasserted, foreseen or unforeseen, or matured or unmatured, which the Debtor may have had against the Released Parties by reason of any act or omission on the part of the Released Parties occurring prior to the date hereof, in each case regarding or relating to the DIP Credit Agreement, the DIP Facility, the DIP Credit Documents or any document or instrument relating thereto, the Prepetition Credit Agreement, the Prepetition Credit Documents, or any document or instrument relating thereto (collectively, the "**Released Matters**"); *provided*, that Released Matters shall not

include (a) any obligations of the DIP Secured Parties under the DIP Credit Documents or this Interim Order and (b) any claims, causes of action, costs or demands of whatever kind or nature, whether known or unknown, liquidated or unliquidated, fixed or contingent, asserted or unasserted, foreseen or unforeseen, or matured or unmatured, resulting solely from the gross negligence or willful misconduct or fraud of the Released Parties, as determined by a court of competent jurisdiction in a final and non-appealable judgment or order.

25. **Loss or Damage to Collateral**. Nothing in this Interim Order, the DIP Credit Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtor in the operation of its business, or in connection with its restructuring efforts. So long as the DIP Secured Parties and the Prepetition Secured Parties comply with their obligations under the DIP Credit Documents and this Interim Order and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Secured Parties and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Debtor.

26. **Insurance**. To the extent that any of the Prepetition Secured Parties is listed as additional insured and/or loss payee under the Borrower's or Guarantors' (each as defined in the DIP Credit Agreement) insurance policies, the DIP Secured Parties are deemed to be the additional insureds and/or loss payees under such insurance policies and shall act in that capacity and

distribute any proceeds recovered or received in respect of any such insurance policies, in each case, subject to the Carve Out, first, to the payment in full of the DIP Obligations and second, subject to paragraph 12 hereof, to the payment of the obligations arising under the Prepetition Credit Documents.

27. **Modification of the Automatic Stay**. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtor to grant the DIP Liens, the Adequate Protection Liens, the DIP Superpriority Claim, and the 507(b) Claim; (b) permit the Debtor to incur all liabilities and obligations under the DIP Credit Documents; (c) permit the Debtor and the DIP Secured Parties to perform such other acts as are necessary to effectuate the terms of this Interim Order; (d) authorize the Debtor to pay the Prepetition Secured Parties (subject to paragraph 12 hereof) and the DIP Secured Parties in accordance with the terms of this Interim Order; and (e) permit the DIP Secured Parties and the Prepetition Secured Parties (subject to paragraph 12 hereof), subject to the Remedies Notice Period, to take any action and exercise all rights and remedies provided to them by this Interim Order, the DIP Credit Documents, the Prepetition Credit Documents, or applicable law.

28. **Cooperation**. All Prepetition Secured Parties shall cooperate with the DIP Agent in its efforts to enforce its liens and security interests in the DIP Collateral. Such lenders shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect the DIP Agent from enforcing its rights or remedies in the DIP Collateral.

29. **Proceeds of Subsequent Financing**. Subject to entry of the Final Order, if the Debtor, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in this Chapter 11 Case or any Successor Case shall obtain

credit or incur debt pursuant to sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the DIP Credit Documents and this Interim Order at any time prior to (a) the indefeasible repayment in full in cash of all Prepetition Obligations and DIP Obligations and (b) the termination of the DIP Lenders' obligations to extend credit under the DIP Facility, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied to the DIP Obligations owing to the DIP Secured Parties and, thereafter, to the extent remaining, to the Prepetition Agent to be applied to the Prepetition Obligations (subject to paragraph 12 hereof).

30. **Survival of Interim Order and Other Matters**. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order that may be entered (i) confirming any chapter 11 plan in this Chapter 11 Case; (ii) converting this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or any Successor Case; (iii) to the extent authorized by applicable law, dismissing this Chapter 11 Case; (iv) withdrawing the reference of this Chapter 11 Case from this Court; or (v) providing for abstention from handling or retaining of jurisdiction of this Chapter 11 Case in this Court. The terms and provisions of this Interim Order, including the DIP Protections granted pursuant to this Interim Order and the DIP Credit Documents, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Interim Order until all the obligations of the Debtor to the DIP Secured Parties pursuant to the DIP Credit Documents have been indefeasibly paid in full in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Credit Documents that survive such discharge by their terms). The rights of all parties to object to the entry of a Final DIP Order are fully reserved.

(a) *Inconsistency*. In the event of any inconsistency between the terms and conditions of the DIP Credit Documents, the DIP Motion, or this Interim Order, the provisions of this Interim Order shall govern and control.

(b) *Enforceability*. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Interim Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order. The rights of all parties in interest to object to the terms of the Final Order, the DIP Credit Agreement, and any other DIP Credit Document at the Final Hearing are expressly reserved.

(c) *Objections Overruled*. All objections to the DIP Motion to the extent not withdrawn or resolved are hereby overruled on an interim basis.

(d) *No Waivers or Modification of Interim Order*. The Debtor irrevocably waives any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Secured Parties or the Prepetition Secured Parties.

(e) *Necessary Action*. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order and the transactions contemplated hereby.

31. **Subordination Agreements**. Nothing contained in this Interim Order shall alter or modify, or be deemed to alter or modify, the rights of any party under (a) that certain Amended and Restated Subordination Agreement, dated as of December 29, 2023, among the Debtor, the Prepetition Agent, and each noteholder party thereto (the "**December 2023 Subordination Agreement**"); (b) that certain Junior Lender Subordination Agreement, dated as of March 20, 2024, among the Debtor and each noteholder party thereto (the "**Junior Lender Subordination Agreement**"); and (c) that certain Senior Lender Subordination Agreement, dated as of March 20, 2024, among the Debtor, the Prepetition Agent, and each noteholder party thereto (the "**Senior Lender Subordination Agreement**," and together with the December 2023 Subordination Agreement and the Junior Lender Subordination Agreement, the "**Subordination Agreements**").

32. **Conditions Precedent**. Except as provided for in the Carve Out, no DIP Lender shall have any obligation to make any DIP Loan under the respective DIP Credit Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP Credit Documents have been satisfied in full or waived in accordance with such DIP Credit Documents.

33. **Rights Preserved**. Nothing in this Interim Order shall be deemed to waive or otherwise impair the Debtor's or DIP Lenders' rights to seek at any future hearing any of the relief set forth in the DIP Motion or otherwise available to them under the Bankruptcy Code in connection with any of the DIP Loans, including but not limited to, any relief that may be available to them under Bankruptcy Code sections 361 or 364.

34. **Final Hearing**.

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for **[•], 2025, at [•]a.m/p.m. prevailing Eastern time** at the United

States Bankruptcy Court for the District of Delaware. Any party in interest objecting to the relief sought at the Final Hearing shall file a written objection no later than **[•], 2025, at 4:00 p.m. prevailing Eastern time**, which objections shall be served so that the same are received on or before such date by: (i) proposed counsel for the Debtor, (a) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn.: Debra Grassgreen (dgrassgreen@pszjlaw.com), James E. O'Neill (joneill@pszjlaw.com), and Maxim Litvak (mlitvak@pszjlaw.com); (ii) counsel for the DIP Secured Parties, (a) Morrison & Foerster LLP, 250 West 55th Street, Floor 20, New York, NY 10019, Attn: James A. Newton, Esq. (jnewton@mofo.com) and Miranda K. Russell, Esq. (mrussell@mofo.com), and (b) Potter Anderson & Corroon LLP, Attn: Christopher M. Samis (csamis@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com); (iii) proposed counsel to the Creditors' Committee, if any; and (iv) the U.S. Trustee, Attn: Jonathan Lipshie (jon.lipshie@usdoj.gov), and shall be filed with the Clerk of the Court, in each case to allow actual receipt of the foregoing no later than **[•], 2025, at 4:00 p.m. prevailing Eastern time**. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtor and entered by this Court.

(b) The Debtor shall promptly serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing and to any party that has filed a request for notices with this Court and any other party required to be served by the Rules.

(c) Notwithstanding the terms of this Interim Order, this Court is not precluded from entering a Final Order containing provisions that are inconsistent with, or contrary to, any of

the terms in this Interim Order, subject to the protections under section 364(e) and the rights of the DIP Secured Parties to terminate the DIP Credit Agreement if such Final Order is not acceptable to them. In the event this Court modifies any of the provisions of this Interim Order or the DIP Credit Documents following such further hearing, such modifications shall not affect the rights and priorities of DIP Secured Parties pursuant to this Interim Order with respect to the DIP Collateral, and any portion of the DIP Obligations that arises or is incurred, advanced, or paid prior to such modifications (or otherwise arising prior to such modifications), and this Interim Order shall remain in full force and effect except as specifically amended or modified at such Final Hearing.

35. **Effect of this Interim Order**. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and, notwithstanding Bankruptcy Rules 6003 and 6004 or any other Bankruptcy Rule, shall take effect and be enforceable as of the Petition Date immediately upon execution thereof, and there shall be no stay of execution or effectiveness of this Interim Order.

36. **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Exhibit A

DIP Credit Agreement

Execution Version

SENIOR SECURED DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT

dated as of

May 5, 2025

by and among

SYNTHEGO CORPORATION,
as the Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

as the Lenders,

and

PERCEPTIVE CREDIT HOLDINGS III, LP
as the Administrative Agent

U.S. $50,000,000

TABLE OF CONTENTS

Page

SECTION 1 DEFINITIONS 1
1.01 Certain Defined Terms 1
1.02 Accounting Terms and Principles 30
1.03 Interpretation 30
1.04 Divisions 31
1.05 Reference Rate Replacement 32
1.06 Rates 32
SECTION 2 THE COMMITMENTS AND THE LOANS 32
2.01 New Money Loans 32
2.02 Borrowing Procedures 33
2.03 Roll-Up Loans 33
2.04 Notes 33
2.05 Use of Proceeds 33
SECTION 3 PAYMENTS OF PRINCIPAL AND INTEREST 34
3.01 Repayments and Prepayments Generally; Application 34
3.02 Interest 34
3.03 Prepayments; Prepayment Premium 35
3.04 Closing Fee 36
3.05 Exit Fee 36
SECTION 4 PAYMENTS, ETC. 37
4.01 Payments 37
4.02 Computations 37
4.03 Set-Off 37
SECTION 5 YIELD PROTECTION, ETC. 38
5.01 Additional Costs 38
5.02 Illegality 40
5.03 Taxes 40
SECTION 6 CONDITIONS PRECEDENT 44
6.01 Conditions to the Borrowing of the Initial Loan 44

TABLE OF CONTENTS
(continued)

Page

6.02 Conditions to Borrowing of any Delayed Draw Loans on a Delayed Draw Borrowing Date 47

SECTION 7 REPRESENTATIONS AND WARRANTIES 48

7.01 Power and Authority 48

7.02 Authorization; Enforceability 49

7.03 Governmental and Other Approvals; No Conflicts 49

7.04 Financial Statements; Material Adverse Change 49

7.05 Properties 50

7.06 No Actions or Proceedings 53

7.07 Compliance with Laws and Agreements 54

7.08 Taxes 55

7.09 Full Disclosure 55

7.10 Investment Company Act and Margin Stock Regulation 55

7.11 [Reserved]. 55

7.12 Equity Holders, Subsidiaries and Other Investments 55

7.13 Indebtedness and Liens 56

7.14 Material Agreements 56

7.15 Restrictive Agreements 56

7.16 Real Property 56

7.17 Pension Matters 56

7.18 Priority of Obligations; Collateral; Security Interest 57

7.19 Governmental Approvals 58

7.20 Transactions with Affiliates 59

7.21 Sanctions 59

7.22 Anti-Corruption 59

7.23 Deposit and Disbursement Accounts 60

7.24 Royalties and Other Payments 60

7.25 Non-Competes 60

7.26 [Reserved]. 60

7.27 Initial Budget 60

TABLE OF CONTENTS
(continued)

Page

7.28 Bankruptcy Matters 60
SECTION 8 AFFIRMATIVE COVENANTS 61
8.01 Financial Statements and Other Information 61
8.02 Notices of Material Events 63
8.03 Existence; Conduct of Business 65
8.04 Payment of Obligations 65
8.05 Insurance 65
8.06 Books and Records; Inspection Rights 66
8.07 Compliance with Laws and Other Obligations 66
8.08 Maintenance of Properties, Etc 66
8.09 Government Approvals, Etc 66
8.10 Action under Environmental Laws 67
8.11 Use of Proceeds 67
8.12 Certain Obligations Respecting Subsidiaries; Further Assurances 67
8.13 Termination of Non-Permitted Liens 68
8.14 Intellectual Property 68
8.15 Maintenance of Governmental Approvals, Contracts, Intellectual Property, Etc 68
8.16 ERISA and Foreign Pension Plan Compliance 69
8.17 Cash Management 69
8.18 Litigation Cooperation 69
8.19 Conference Calls 69
8.20 Information Rights 70
8.21 First and Second Day Orders 70
8.22 Certain Case Milestones 70
8.23 Budget 70
SECTION 9 NEGATIVE COVENANTS 70
9.01 Indebtedness 70
9.02 Liens 72
9.03 Fundamental Changes, Acquisitions, Etc 73

TABLE OF CONTENTS
(continued)

Page

9.04 Lines of Business 73
9.05 Investments 73
9.06 Restricted Payments 74
9.07 Payments of Indebtedness 74
9.08 Change in Fiscal Year 74
9.09 Sales of Assets, Etc 74
9.10 Transactions with Affiliates 75
9.11 Restrictive Agreements 76
9.12 Modifications of Organic Documents 76
9.13 Sales and Leasebacks 77
9.14 Hazardous Material 77
9.15 Accounting Changes 77
9.16 Compliance with ERISA 77
9.17 Inconsistent Agreements 77
9.18 Sanctions; Anti-Corruption Use of Proceeds 77
9.19 Inbound and Outbound Licenses 78
9.20 Carve-Out 78
9.21 No Subsidiaries 78
SECTION 10 [RESERVED] 78
SECTION 11 EVENTS OF DEFAULT 78
11.01 Events of Default 78
11.02 Remedies 82
11.03 Additional Remedies 82
SECTION 12 THE ADMINISTRATIVE AGENT 83
12.01 Appointment and Duties 83
12.02 Binding Effect 84
12.03 Use of Discretion 84
12.04 Delegation of Rights and Duties 84
12.05 Reliance and Liability 85
12.06 Administrative Agent Individually 86

TABLE OF CONTENTS
(continued)

Page

12.07 Lender Credit Decision 86
12.08 Expenses; Indemnities 86
12.09 Resignation of the Administrative Agent 87
12.10 Release of Collateral or Guarantors 87
12.11 Additional Secured Parties 88
SECTION 13 [RESERVED] 88
SECTION 14 MISCELLANEOUS 88
14.01 No Waiver 88
14.02 Notices 88
14.03 Expenses, Indemnification, Etc. 89
14.04 Amendments, Etc. 90
14.05 Successors and Assigns 91
14.06 Survival 93
14.07 Captions 93
14.08 Counterparts 93
14.09 Governing Law 94
14.10 Jurisdiction, Service of Process and Venue 94
14.11 Waiver of Jury Trial 94
14.12 Waiver of Immunity 94
14.13 Entire Agreement 95
14.14 Severability 95
14.15 No Fiduciary Relationship 95
14.16 Confidentiality 95
14.17 Interest Rate Limitation 96
14.18 Exit Fee 96
14.19 Judgment Currency 96
14.20 USA PATRIOT Act 97
14.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions 97
14.22 Credit Bidding 97

TABLE OF CONTENTS
(continued)

SCHEDULES AND EXHIBITS

Schedule 1	-	Commitments
Schedule 7.05(b)(i)	-	Specified Material Intellectual Property
Schedule 7.05(b)(ii)	-	Excluded Specified Intellectual Property
Schedule 7.05(b)(iii)	-	Excluded Specified Intellectual Property (Patents)
Schedule 7.06(a)	-	Certain Litigation
Schedule 7.06(c)	-	Labor Matters
Schedule 7.07(e)	-	Material Violation of Healthcare Law
Schedule 7.08	-	Taxes
Schedule 7.12(a)	-	Holders of Equity Interests of the Borrower
Schedule 7.13(a)	-	Existing Indebtedness of the Borrower and each of its Subsidiaries
Schedule 7.13(b)	-	Existing Liens of the Borrower and each of their Subsidiaries
Schedule 7.14	-	Material Agreements of Obligors
Schedule 7.15	-	Restrictive Agreements
Schedule 7.16	-	Real Property Owned or Leased by the Borrower or any Subsidiary
Schedule 7.17	-	Pension Matters
Schedule 7.20	-	Transactions with Affiliates
Schedule 7.23	-	Deposit, Disbursement and Investment Accounts
Schedule 7.24	-	Royalties and Other Payments
Schedule 8.22	-	Case Milestones
Schedule 9.05	-	Permitted Investments
Schedule 9.13	-	Permitted Sales and Leasebacks
Schedule 9.19(a)	-	Inbound Licenses
Schedule 9.19(b)	-	Outbound Licenses

Exhibit A	-	Form of Note
Exhibit B	-	Form of Borrowing Notice
Exhibit C	-	[Reserved]
Exhibit D-1	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit D-2	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit D-3	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit D-4	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E	-	[Reserved]
Exhibit F	-	Form of Assignment and Assumption

TABLE OF CONTENTS
(continued)

Exhibit G - [Reserved]
Exhibit H - [Reserved]

CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of May 5, 2025 (this "***Agreement***"), by and among Synthego Corporation, a Delaware corporation (the "***Borrower***"), Perceptive Credit Holdings III, LP (the "***Closing Date Lender***") and each other lender that may from time to time become a party hereto (each, including the Closing Date Lender, a "***Lender***" and collectively, the "***Lenders***"), and Perceptive Credit Holdings III, LP, as administrative agent for the Lenders (in such capacity, the "***Administrative Agent***").

WITNESSETH:

WHEREAS, on May 5, 2025 (the "***Petition Date***"), the Borrower (in its capacity as debtor under the Case, the "***Debtor***") filed a voluntary petition with the Bankruptcy Court initiating the case that is pending under Chapter 11 of the Bankruptcy Code (the "***Case***") and has continued in the possession of its assets and in the management of its businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Borrower has requested that the Lenders extend to the Borrower a debtor-in-possession, superpriority, senior secured term loan credit facility (the "***DIP Facility***") denominated in U.S. Dollars consisting of (a) a new money multiple draw term loan credit facility in an aggregate principal amount not to exceed $12,500,000 (the "***New Money Facility***"), which shall consist of (i) the initial borrowing of an aggregate principal amount of $5,000,000 (the "***Initial Loan***") and (ii) one or more delayed draw term loan borrowings not to exceed an aggregate principal amount for all such borrowings of $7,500,000 (each such loan, a "***Delayed Draw Loan***" and collectively, the "***Delayed Draw Loans***") and (b) subject to, and upon the entry of, the DIP Order, the Roll-Up Loans in an aggregate principal amount up to $37,500,000 (the "***Roll-Up Facility***"), in each case to be afforded the Liens and priority set forth in the DIP Order and the other Loan Documents, and in each case, subject to the terms and conditions set forth herein, including the applicable terms and conditions set forth in **Section 6** hereof; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions set forth herein, to provide such debtor-in-possession, superpriority, senior secured term loan credit facility.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1
DEFINITIONS

1.01 Certain Defined Terms. As used herein (including the preamble and recitals), the following terms have the following respective meanings:

"***2023 Convertible Note Holders***" means the "Investors" as defined in Amendment No. 2 (as defined in the Pre-Petition Credit Agreement).

"***2023 Convertible Note Purchase Agreement***" means the "Note Purchase Agreement" as defined in Amendment No. 3 (as defined in the Pre-Petition Credit Agreement).

"***Acceptable Chapter 11 Plan***" means a Chapter 11 Plan that (a) provides for the termination of the Commitments and to the extent not otherwise previously paid in full in cash, the payment in full in cash of (x) the Obligations under the Loan Documents and (y) the "Obligations" under and as defined in the Pre-Petition Credit Agreement or (b) is otherwise acceptable to the Administrative Agent.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of an amalgamation, consolidation, merger, tender offer, purchase of Equity Interests or other assets or properties, or similar transaction having the same effect as any of the foregoing, (i) acquires any business or all or substantially all of the assets of another Person, (ii) acquires control of Equity Interests of another Person representing more than fifty percent (50%) of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a Board of directors, determined on a fully-diluted, as-if-converted or exercised basis, or (iii) acquires control of more than fifty percent (50%) of the Equity Interests of another Person engaged in any business that is not managed by a Board, determined on a fully-diluted, as-if-converted or exercised basis.

"***Administrative Agent***" has the meaning set forth in the preamble hereto.

"***Adverse Regulatory Event***" means the occurrence of any of the following events or circumstances:

(a) (i) the failure of the Borrower or any of its Subsidiaries to hold, directly or through licensees or agents, all Governmental Approvals and Healthcare Permits necessary or required for the Borrower or any such Subsidiary to conduct its respective operations and businesses in the ordinary course; or (ii) the failure of any such necessary or required Governmental Approval or Healthcare Permit to be valid or otherwise effective and in full force and effect for purposes of conducting (to the extent necessary or required) such operations and businesses;

(b) the failure of the Borrower or any of its Subsidiaries to make or file with the FDA or any other applicable Governmental Authority any required notice, registration, report or the like (each a "***Regulatory Filing***"), with respect to its ordinary course operations and businesses that could reasonably be expected to result in the loss of any such Regulatory Filing that is necessary or required for the Borrower or any such Subsidiary to conduct its respective operations and businesses in the ordinary course;

(c) the Borrower or any of its Subsidiaries receives any warning letter, notice or similar document with respect to any of its Products or any Commercialization and Development activities or any of its business activities from any Governmental Authority that (i) asserts that such Person lacks a required Governmental Approval or Healthcare Permit or is otherwise in violation of (or is non-compliant with) any applicable Law, or (ii) requires or is reasonably likely to require or cause the Borrower or any such Subsidiary to discontinue, cease, withdraw or recall the Commercialization and Development of any Product;

(d) the Borrower or any of its Subsidiaries is notified in writing that a Governmental Authority has commenced any regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) with respect to any of its business activities; or voluntarily or involuntarily agrees to halt or discontinue its ordinary course business activities in whole or material part as a result of any of the foregoing; or

(e) (i) any Governmental Authority commences any criminal, injunctive, seizure, detention or civil penalty action, (ii) the Borrower or any Subsidiary enters into any consent decree, plea agreement or other final settlement with any Governmental Authority with respect to any of the foregoing, or (iii) the Borrower or any Subsidiary voluntarily or involuntarily recalls, halts or otherwise discontinues Commercialization and Development activities with respect to any Product.

"***Affected Financial Institution***" means (a) any EEA Financial Institution, or (b) any UK Financing Institution.

"***Affiliate***" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that with respect to any Lender, an Affiliate of such Lender shall include, without limitation, all of such Lender's Related Funds.

"***Agreement***" has the meaning set forth in the preamble hereto.

"***Amendment No. 5 Effective Date***" means February 4, 2025.

"***Amendment No. 6 Effective Date***" means March 21, 2025.

"***APA***" means an asset purchase agreement in form and substance acceptable to the Administrative Agent filed with the Bankruptcy Court pursuant to which the Borrower shall sell substantially all of its assets used in its business (such sale, the "***Sale***").

"***Applicable Margin***" means eleven and one-half of one percent (11.50%), as such percentage may be increased pursuant to **Section 3.02(b)**.

"***Approved Budget***" means the Initial Budget; provided, that, upon the written approval of the Administrative Agent of an Updated Budget in accordance with **Section 8.01(o)**, "Approved Budget" shall mean such Updated Budget.

"***Asset Sale***" has the meaning set forth in **Section 9.09**.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee of such Lender in substantially the form of **Exhibit F**.

"***Avoidance Actions***" means avoidance actions under Chapter 5 of the Bankruptcy Code or any applicable state law equivalents.

"***Bail-In Action***" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"***Bail-In Legislation***" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"***Bailee Letter***" means a bailee letter substantially in the form of Exhibit F to the Security Agreement.

"***Bankruptcy Code***" means Title 11 of the United States Code entitled "Bankruptcy."

"***Bankruptcy Court***" means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Case from time to time.

"***Benefit Plan***" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Obligor or Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Bid Procedures and Scheduling Motion***" means a motion to approve bidding procedures and stalking horse protections in respect of a Sale, which motion and any related order, exhibits or supplements shall be in form and substance reasonably acceptable to the Administrative Agent.

"***Board***" means, with respect to any Person, the board of directors (or equivalent management or oversight body) of such Person or any committee thereof duly authorized to act on behalf of such board or equivalent body.

"***Borrower***" has the meaning set forth in the preamble hereto.

"***Borrowing Date***" means, as the context may require, the Closing Date (for the Initial Loan borrowing) or any Delayed Draw Borrowing Date (for the borrowing of Delayed Draw Loans).

"***Borrowing Notice***" means a written notice substantially in the form of **Exhibit B**.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York, New York.

"***Capital Lease Obligations***" means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP (with all amounts calculated without giving effect to any change in accounting for

leases pursuant to GAAP, including, without limitation, resulting from the implementation of changes to (x) Accounting Standards Codification Topic 840, Leases, or (y) Accounting Standards Codification Topic 842, Leases).

"***Carve-Out***" shall have the meaning specified in the Interim DIP Order prior to entry of the Final DIP Order, and the Final DIP Order thereafter.

"***Case***" has the meaning set forth in the recitals hereto.

"***Casualty Event***" means the damage, destruction or condemnation, as the case may be, of any property of any Person.

"***Change of Control***" means (i) (A) any Person or two or more Persons (other than the Holders) acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by Contract or otherwise, control over, voting stock of the Borrower representing forty percent (40%) or more of the combined voting power of all voting stock of the Borrower, determined on a fully-diluted, as if converted or exercised basis, or (B) one or more Holders, individually or collectively, fail to own and hold, directly or indirectly, beneficially and of record, at least twenty percent (20%) of the Equity Interests of the Borrower having ordinary voting power, determined on a fully-diluted basis, (ii) the Borrower shall cease to own, directly or indirectly, beneficially and of record, one hundred percent (100%) of the issued and outstanding Equity Interests of each of its Subsidiaries (other than directors' qualifying shares or other similar shares as required by applicable law), free and clear of all Liens (other than Specified Permitted Liens), or (iii) the sale of all or substantially all of the property or business of the Borrower and its Subsidiaries, taken as a whole.

"***Chapter 11 Plan***" means a chapter 11 plan in the Case of the Debtor.

"***Charter***" means the Borrower's amended and restated certificate of incorporation, as in effect on the Amendment No. 5 Effective Date, and as subsequently amended or otherwise modified as permitted hereunder.

"***Claim***" means each of the following, when in writing: any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, information (brought by a public prosecutor without grand jury indictment) or other similar process, assessment or reassessment, whether made, converted or assessed in connection with a debt, liability, dispute, breach, failure or otherwise.

"***Class B Common Stock***" has the meaning ascribed thereto in the Charter.

*"**Closing Date**"* means the date the conditions to funding the Initial Loan set forth in **Section 6.01** are satisfied or waived in accordance with such Section.

"***Closing Date Lender***" has the meaning set forth in the preamble hereto.

"***Closing Fee***" has the meaning set forth in **Section 3.04**.

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"***Collateral***" has the meaning set forth in the Security Agreement and all other assets that become subject to the Liens created by the Security Agreement from time to time, the Interim DIP Order or the Final DIP Order, provided, that to the extent of any conflict with respect to the Liens created by the Security Agreement, the Interim DIP Order or the Final DIP Order, then the Interim DIP Order (and, when entered, the Final DIP Order) shall control.

"***Commercialization and Development***" means, with respect to any Product, any combination of (i) research, development, manufacturing, quality compliance, use, sale, licensing, importation, exportation, shipping, storage, handling, designing, labeling, marketing, promotion, supply, dispensing, distribution, testing, packaging, purchasing or other commercialization activity, (ii) receipt of payment or other remuneration in respect of any of the foregoing (including, without limitation, in respect of licensing, royalty or similar payments) or (iii) any similar or other activities the purpose of which is to commercially exploit such Product.

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make the Initial Loan to the Borrower on the Closing Date and the Delayed Draw Loans to the Borrower on any Delayed Draw Borrowing Date, in each case, in accordance with the terms and conditions of this Agreement, which commitments are in the amounts set forth opposite such Lender's name on **Schedule 1** hereto, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise.

"***Commodity Account***" means any commodity account, as such term is defined in Section 9-102 of the NY UCC.

"***Confirmation Order***" means an order of the Bankruptcy Court confirming an Acceptable Chapter 11 Plan pursuant to Section 1129 of the Bankruptcy Code, in form and substance acceptable to the Administrative Agent, which shall be in full force and effect and shall not be reversed, vacated, stayed, amended, supplemented or otherwise modified, in each case, without the prior written consent of the Administrative Agent.

"***Conforming Changes***" means, with respect to either the use or administration of One-Month Term SOFR, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), with respect to the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests, prepayments, or conversion or continuation notices, the applicability and length of lookback periods, the applicability of **Section 3.02(f)** and other technical, administrative or operational matters) that the Administrative Agent reasonably decides may be appropriate to reflect the adoption and implementation of such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such rate exists, in such other manner of administration

as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"***Connection Income Taxes***" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"***Consummation Date***" means the date of substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Chapter 11 Plan that is confirmed pursuant to a Confirmation Order of the Bankruptcy Court.

"***Contingent Acquisition Obligations***" has the meaning set forth in **clause (v)** of the definition of "Indebtedness".

"***Contract***" means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement, indenture, instrument, or engagement under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise).

"***Control***" means, in respect of a particular Person, the possession, by one or more other Persons, directly or indirectly, of the power to direct or cause the direction of the management or policies of such particular Person, whether through the ability to exercise voting power, by contract or otherwise. "***Controlling***" and "***Controlled***" (and similar derivatives) have meanings correlative thereto.

"***Controlled Account***" has the meaning set forth in **Section 8.17(a)**.

"***Controlled Investment Affiliate***" means, as to any Person, any other Person that directly or indirectly is in Control of, is Controlled by, or is under common Control with such Person and is organized by such first Person (or any other Person Controlling such first Person) primarily for making equity investments in the Borrower or any other portfolio companies in the ordinary course of business.

"***Convertible Note Holders***" means the Subsequent Convertible Note Holders and the 2023 Convertible Note Holders.

"***Copyright***" means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof, and all other rights whatsoever accruing thereunder or pertaining thereto.

"***Debtor***" has the meaning set forth in the recitals hereto.

"***Default***" means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

"***Default Rate***" has the meaning set forth in **Section 3.02(b)**.

"***Delayed Draw Borrowing Date***" means the date on which any Delayed Draw Loans are made pursuant to the terms and conditions hereof.

"***Delayed Draw Borrowing Date Certificate***" has the meaning set forth in **Section 6.02(a)**.

"***Delayed Draw Loan***" has the meaning set forth in the recitals hereto.

"***Deposit Account***" means any deposit account, as such term is defined in Section 9-102 of the NY UCC.

"***Designated Jurisdiction***" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"***DIP Facility***" has the meaning specified in the recitals hereto.

"***DIP Motion***" means a motion, in form and substance acceptable to the Administrative Agent, to be filed in the Bankruptcy Court, pursuant to which motion the Debtor shall seek entry of the Interim DIP Order and the Final DIP Order.

"***DIP Orders***" mean, collectively, the Interim DIP Order and the Final DIP Order.

"***Disqualified Equity Interests***" means (a) with respect to any Person (including the Borrower or any other Obligor), any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable upon exercise or otherwise), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is one hundred and eighty (180) days after the Maturity Date; and (b) with respect to the Borrower at any time after the Amendment No. 5 Effective Date, any of its Class B Common Stock or any other High Vote Stock.

"***Dollars***" and "***$***" means lawful money of the United States of America.

"***EEA Financial Institution***" means (i) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (ii) any entity established in an EEA Member Country which is a parent of an institution described in **clause (i)** of this definition, or (iii) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in **clauses (i)** or **(ii)** of this definition and is subject to consolidated supervision with its parent.

"***EEA Member Country***" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"***EEA Resolution Authority***" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"***Environmental Law***" means any Law or Governmental Approval relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and all local laws and regulations, whether U.S. or non-U.S., related to environmental matters and any specific agreements entered into with any competent authorities which include commitments related to environmental matters.

"***Equity Interests***" means, with respect to any Person (for purposes of this defined term, an "***issuer***"), all shares of, interests or participations in, or other equivalents in respect of such issuer's capital stock, including all membership interests, partnership interests or equivalent, and all debt or other securities (including warrants, options and similar rights) directly or indirectly exchangeable, exercisable or otherwise convertible into, such issuer's capital stock, whether now outstanding or issued after the Closing Date, and in each case, however classified or designated and whether voting or non-voting.

"***Equivalent Amount***" means, with respect to an amount denominated in a single currency, the amount in another currency that could be purchased by the amount in the former currency determined by reference to the Exchange Rate at the time of determination.

"***ERISA***" means the United States Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"***ERISA Event***" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) of any ERISA Affiliate from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by any

Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which could reasonably be expected to give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any Lien (or the fulfillment of the conditions for the imposition of any Lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or Title IV of ERISA, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor; or (xix) any Foreign Benefit Event.

"***ERISA Funding Rules***" means the rules regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"***EU Bail-In Legislation Schedule***" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"***Event of Default***" has the meaning set forth in **Section 11.01**.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Exchange Rate***" means, as of any date of determination, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Reuters screen at or about

11:00 a.m. (New York City time) on such date. In the event that such rate does not appear on the Reuters screen, the "***Exchange Rate***" shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably agreed upon by the Borrower and the Administrative Agent (each acting in good faith) or, in the absence of such agreement within two (2) Business Days, such Exchange Rate shall instead be reasonably designated by the Administrative Agent.

"***Excluded Account***" means any (i) bank or deposit account used exclusively for payroll, the withheld employee portion of payroll taxes or other employee wage and benefit payments, (ii) merchant account in the nature of accounts with payment service providers such as Square, PayPal and Stripe, and (iii) any bank or deposit account exclusively used for purposes of cash deposits or pledges constituting Permitted Liens pursuant to **Sections 9.02(e)** or **Section 9.02(l)**.

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 5.03(h)**) or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 5.03**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient's failure to comply with **Section 5.03(f)**, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

"***Existing First Lien Obligations***" means the "Obligations" under and as defined in the Pre-Petition Credit Agreement (including, for the avoidance of doubt, all applicable "Early Prepayment Fees" and "Exit Fees" (as each such term is defined in the Pre-Petition Credit Agreement)).

"***Exit Fee***" has the meaning set forth in **Section 3.05**.

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

"***FD&C Act***" means the U.S. Food, Drug and Cosmetic Act of 1938 (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

"***FDA***" means the U.S. Food and Drug Administration and any successor entity.

"***Federal Funds Effective Rate***" means, for any day, the greater of (i) 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 sets forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate and (ii) zero percent (0%).

"***Final DIP Order***" means an order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in form and substance satisfactory to the Administrative Agent approving, on a final basis, the Loan Documents and the transactions contemplated thereby and providing the Lenders and the other Indemnified Parties with customary releases acceptable to the Administrative Agent.

"***Foreign Benefit Event***" means, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable Law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable Law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging the insolvency of any such Foreign Pension Plan, (d) the incurrence of any liability in excess of $100,000 by the Borrower or any of its Subsidiaries under applicable Law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable Law and that could reasonably be expected to result in the incurrence of any liability by the Borrower or any of its Subsidiaries, or the imposition on the Borrower or any of its Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable Law, in each case in excess of $100,000.

"***Foreign Lender***" means a Lender that is not a U.S. Person.

"***Foreign Pension Plan***" means any benefit plan that under applicable Law, other than the Laws of the United States or any political subdivision thereof, is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

"***GAAP***" means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession

that are applicable to the circumstances as of the date of determination. Unless otherwise mutually agreed upon by the Borrower and the Administrative Agent pursuant to **Section 1.02(b)**, all references to "GAAP" used herein shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(e)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance, exemption, filing or notice that is issued or granted by or from (or pursuant to any act of) any Governmental Authority pursuant to or in connection with any Law (including any Healthcare Law), including any application or submission related to any of the foregoing, whether related to any Product, any Commercialization and Development of any Product or other business or commercial activity.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S., including the FDA and any other agency, branch or other governmental body that has regulatory, supervisory or administrative authority or oversight over, or is charged with the responsibility or vested with the authority to administer or enforce, any Healthcare Laws.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"***Hazardous Material***" means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (i) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (ii) any material classified or regulated as "hazardous" or "toxic" or words of like import pursuant to an Environmental Law.

"***Healthcare Laws***" means all applicable Laws and Governmental Approvals, whether U.S. or non-U.S., federal, state, local or equivalent, relating to any Product, the Commercialization and Development of any Product or the provision of medical or other professional healthcare services

or supplies, billing and collection practices relating to the payment for healthcare services or supplies, insurance laws (including law related to payment for "no-fault" claims) and workers compensation laws as they relate to the provision of, and billing and payment for, the sale or distribution of any Products, healthcare services, patient healthcare, patient healthcare information, patient abuse, the quality and adequacy of medical care, equipment, personnel, operating policies, fee splitting, including, without limitation, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)) (the "***Federal Anti-Kickback Statute***"), the Physician Self-Referral Statute (42 U.S.C. § 1395nn) (the "***Stark Law***"), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Act (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286, 287, 1035, 1347 and 1349, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d et seq.), the exclusion law (42 U.S.C. § 1320a-7), the civil monetary penalties law (42 U.S.C. § 1320a-7a), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.), the Federal Food Drug & Cosmetic Act (FD&C Act) (21 U.S.C. § 321 et seq., the Public Health Service Act (PHS Act) (42 U.S.C. § 201 et seq.), the statutes, regulations and binding directives of applicable federal healthcare programs, including but not limited to Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act), any binding collection and reporting requirements relating to applicable federal health care programs and any successor government programs, any rules and regulations promulgated pursuant to the statutes listed herein and any and all comparable U.S. and non-U.S. Laws and other applicable healthcare laws and regulations.

"***Healthcare Permit***" means, with respect to any Person and with respect to any of its Products or the Commercialization and Development of any Product or otherwise in its ordinary course business activities, including the Commercialization and Development of any Product, any Governmental Approval (i) issued or required under any Healthcare Laws applicable to such activities of such Person, including activities related to the provision of billing or invoicing for the sale of Products or other goods or services regulated or administered under any Healthcare Laws, or (ii) issued to such Person or required to be held by such Person under any Healthcare Laws with respect to the Commercialization and Development of any Product.

"***Hedging Agreement***" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"***High Vote Stock***" means any Equity Interests issued by the Borrower that (i) possess the right to more than one vote per share on matters presented to the stockholders of the Borrower or (ii) are convertible, exercisable or exchangeable for or into Class B Common Stock or any other High Vote Stock.

"***Holder***" means (i) 8VC Fund I, LP, (ii) Founders Fund, (iii) Perceptive Advisors LLC, (iv) Hadley Harbor Master Investors (Cayman) III L.P., (v) Menlo Ventures XI, L.P., (vi) RA Capital Advisors LLC, (vii) WI Harper Fund, (viii) The Continuous Agency Trust, (ix) Luma Bio, L.P. and (x) Moore Strategic Ventures, LLC, and each Controlled Investment Affiliate of any holder specified in **clauses (i)** through **(x)** of this definition.

"***Indebtedness***" of any Person means, without duplication, (i) all obligations of such Person for borrowed money or obligations of such Person with respect to deposits or advances of any kind by third parties, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements, or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid (excluding trade account payables), (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services ((A) excluding current accounts payable incurred in the ordinary course of business, but (B) including earn-out payments, purchase price adjustments and similar contingent payment obligations relating to any Acquisition (such obligations arising pursuant to **clause (B)**, collectively, "***Contingent Acquisition Obligations***")), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (xii) all obligations of such Person under license or other agreements containing a guaranteed minimum payment or purchase by such Person, (xiii) any Disqualified Equity Interests of such Person, and (xiv) all other obligations required to be classified as indebtedness of such Person under GAAP. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Party***" has the meaning set forth in **Section 14.03(b)**.

"***Indemnified Taxes***" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (ii) to the extent not otherwise described in **clause (i)**, Other Taxes.

"***Information Certificate***" means an Information and Collateral Certificate, in substantially the form set forth in **Exhibit G**.

"***Initial Budget***" has the meaning ascribed to such term in **Section 7.27**.

"***Initial Loan***" has the meaning set forth in the recitals to this Agreement.

"***Insolvency Proceeding***" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

"***Intellectual Property***" means all Patents, Trademarks, Copyrights, and Technical Information, whether registered or not, U.S. or non-U.S., including (without limitation) all of the following:

(i) applications, registrations, amendments and extensions relating to such Intellectual Property;

(ii) rights and privileges arising under any applicable Laws with respect to such Intellectual Property;

(iii) rights to sue for or collect any damages for any past, present or future infringements of such Intellectual Property; and

(iv) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest Period***" means (i) initially, the period commencing on (and including) the Closing Date and ending on (and including) the last day of the calendar month in which the Closing Date occurred, and (ii) thereafter, the period beginning on (and including) the first day of each succeeding calendar month and ending on the earlier of (and including) (x) the last day of such calendar month and (y) the Maturity Date.

"***Interest Rate***" means, for any Interest Period, the sum of (i) the Applicable Margin plus (ii) the greater of (x) the Reference Rate as of the second Business Day immediately preceding the first day of such Interest Period and (y) four percent (4.00%).

"***Interim DIP Order***" means the order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) approving the Loan Documents and the transactions contemplated thereby on an interim basis in the Case.

"***Invention***" means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

"***Investment***" means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the making of any deposit with, or advance, loan, assumption of debt, or other extension of credit to, or capital contribution in any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (iii) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount

committed to be advanced, lent or extended to such Person; or (iv) the entering into of any Hedging Agreement. The amount of an Investment will be determined at the time the Investment is made without giving effect to any subsequent changes in value.

"***IRS***" means the U.S. Internal Revenue Service or any successor agency and to the extent relevant, the U.S. Department of the Treasury.

"***Landlord Consent***" means a landlord consent substantially in the form of Exhibit G to the Security Agreement.

"***Law***" means any U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including any interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lenders***" has the meaning set forth in the preamble hereto.

"***Lien***" means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest.

"***Loan***" means the Initial Loan made on the Closing Date, any Delayed Draw Loan, the Roll-Up Loan deemed to be made hereunder upon the issuance of the Final DIP Order, any PIK Loan, and "***Loans***" means, as the context may require, any combination of the foregoing.

"***Loan Documents***" means, collectively, this Agreement, the Notes, the Security Documents, any Guarantee, and any other guaranty, security agreement, subordination agreement, intercreditor agreement and any other present or future document, instrument, agreement, certificate or other amendment, waiver or modification of the foregoing, delivered to or for the benefit of the Administrative Agent or any Secured Party in connection with this Agreement (including, without limitation, in connection with **Section 8.12**) or any of the other Loan Documents, in each case, as amended or otherwise modified.

"***Loss***" means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

"***Margin Stock***" means "margin stock" within the meaning of Regulation U and Regulation X.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean, excluding results from the filing and administration of the Case, a material adverse change in or effect on (i) the business, assets, financial performance, operations or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, as and when due, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights and remedies of the Administrative Agent or the Lenders under any of the Loan Documents.

"***Material Agreement***" means (i) any Contract to which the Borrower or any of its Subsidiaries is a party or a beneficiary from time to time, the absence or termination of which could reasonably be expected to result in a Material Adverse Effect, and (ii) any other Contract to which the Borrower or any of its Subsidiaries is a party or a guarantor (or equivalent) that, during any period of twelve (12) consecutive months, is reasonably expected to (1) result in payments or receipts (including royalty, licensing or similar payments) made to the Borrower or any of its Subsidiaries in an aggregate amount in excess of $100,000, or (2) require payments or expenditures (including royalty, licensing or similar payments) to be made by the Borrower or any of its Subsidiaries in an aggregate amount in excess of $100,000.

"***Material Indebtedness***" means, at any time, any Indebtedness of any Obligor or any Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds $100,000 (or the Equivalent Amount in other currencies).

"***Material Intellectual Property***" means all Obligor Intellectual Property, whether currently owned or licensed, or acquired, developed or otherwise licensed or obtained after the date hereof (i) the loss of which could reasonably be expected to result in a Material Adverse Effect or (ii) that on an individual asset basis has a fair market value in excess of $100,000, as determined in good faith by the Borrower.

"***Material Regulatory Event***" means an Adverse Regulatory Event that (i) individually has resulted in, or could reasonably be expected to result in, a fine, penalty or Loss (including a loss of Revenue) in excess of $100,000 per occurrence, including any Loss resulting from a recall (or equivalent) of any Product (or cessation of Commercialization and Development Activities with respect to any Product), (ii) when taken together with each other Adverse Regulatory Event that has occurred since the Closing Date, has resulted in, or could reasonably be expected to result in, a fine, penalty or Loss (including a loss of Revenue) in excess of $200,000, or (iii) that could reasonably be expected to result in the loss of any Governmental Approvals or Healthcare Permits necessary or required for the Borrower or any such Subsidiary to conduct its respective operations and businesses in the ordinary course.

"***Maturity Date***" means the earliest of (a) July 18, 2025, (b) the date of conversion of the Case to a case under Chapter 7 of the Bankruptcy Code without prior written consent of the Administrative Agent, (c) the date of dismissal of the Case without the prior written consent of the Administrative Agent, (d) the date of appointment in the Case of a trustee without the prior written consent of the Administrative Agent, (e) the appointment of an examiner with expanded powers

without the prior written consent of the Administrative Agent, (f) the Consummation Date of any Chapter 11 Plan, (g) the date of the consummation of the Sale or (h) the date of acceleration of the Loans (including, without limitation, the non-satisfaction of any Milestone by the applicable specified deadline and the non-waiver of such non-satisfaction by the Administrative Agent and the Majority Lenders).

"***Milestones***" has the meaning assigned to such term in **Section 8.22**.

"***Medicaid***" means that government-sponsored entitlement program under Title XIX, P.L. 89-97 of the Social Security Act, which provides federal grants to states for medical assistance based on specific eligibility criteria, as set forth on Section 1396, et seq. of Title 42 of the United States Code.

"***Medicare***" means that government-sponsored insurance program under Title XVIII, P.L. 89-97, of the Social Security Act, which provides for a health insurance system for eligible elderly and disabled individuals, as set forth at Section 1395, et seq. of Title 42 of the United States Code.

"***Multiemployer Plan***" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Net Cash Proceeds***", means, (i) with respect to any Casualty Event experienced or suffered by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) including, without limitation, in the form of insurance proceeds or condemnation awards in respect of such Casualty Event, from time to time by or on behalf of such Person after deducting therefrom only (x) reasonable costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; and (ii) with respect to any Asset Sale by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (x) reasonable costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; provided that, in each case of **clauses (i)** and **(ii)**, costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries and (y) properly attributable to such Casualty Event or Asset Sale, as the case may be.

"***New Money Facility***" has the meaning specified in the recitals hereto.

"***Note***" means a promissory note, in substantially the form of **Exhibit A** hereto, executed and delivered by the Borrower to any Lender in accordance with **Section 2.04**.

"***Note Purchase Agreement***" means, collectively, (i) the 2023 Convertible Note Purchase Agreement and (ii) the Senior Subordinated Note Purchase Agreement.

"***NY UCC***" means the UCC as in effect from time to time in New York.

"***Obligations***" means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Secured Party, any indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is the Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

"***Obligor Intellectual Property***" means, at any time of determination, Intellectual Property owned by, licensed to or otherwise held by the Borrower or any of its Subsidiaries at such time.

"***Obligor***" means the Borrower.

"***OFAC***" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"***One-Month Term SOFR***" means, the Term SOFR Reference Rate (expressed, as a decimal, rounded upwards, if necessary, to the nearest 1/100th of 1%) for a one month tenor on the day (such day, the "***Periodic Term SOFR Determination Day***") that is two (2) U.S. Government Securities Business Days prior to the first day of the applicable Interest Period, as such rate is published by the Term SOFR Administrator; provided that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then One-Month Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

"***Organic Document***" means, for any Person, such Person's formation documents, including, as applicable its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Person's Equity Interests, or any equivalent document of any of the foregoing.

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

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(h)**).

"***Participant***" has the meaning set forth in **Section 14.05(e)**.

"***Participant Register***" has the meaning set forth in **Section 14.05(g)**.

"***Patents***" means all patents and patent applications, including (i) the Inventions and improvements described and claimed therein, (ii) the reissues, divisions, continuations, renewals, extensions, and continuations in part thereof, and (iii) all income, royalties, damages and payment now or hereafter due and payable with respect thereto, (iv) all damages and payment for past or future infringements thereof, and rights to sue thereof, and (v) all rights whatsoever accruing thereunder or pertaining thereto throughout the world.

"***Patriot Act***" has the meaning set forth in **Section 14.20.**

"***Payment Date***" means (i) the last day of each Interest Period; provided that if such last day of any Interest Period is not a Business Day, then the Payment Date shall be the next succeeding Business Day, and (ii) the Maturity Date.

"***PBGC***" means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Periodic Term SOFR Determination Day***" has the meaning set forth in the definition of "One-Month Term SOFR".

"***Permitted Cash Equivalent Investments***" means (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any state thereof having maturities of not more than one year from the date of acquisition; (iii) commercial paper maturing no more than one year after the date of its acquisition and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (iv) (A) demand deposits, (B) time deposits and certificates of deposit, (C) bankers' acceptances and (D) overnight bank deposits, in each case maturing within one hundred and eighty (180) days from the date of acquisition thereof issued or guaranteed by or placed with any domestic office of any commercial bank, organized under the laws of the United States of America or any state thereof, having capital, surplus and undivided profits in excess of $500,000,000 whose short-term debt is rated "A-2" or higher by Standard & Poor's Ratings Group or "P-2" or higher by Moody's Investors Service, Inc.; (v) fully collateralized repurchase obligations with a term of not more than thirty (30) days for underlying securities of the type described in **clause (ii)** above entered into with a financial institution meeting the qualifications specified in **clause (iv)** above; (vi) money market funds at least ninety percent (90%) of the assets of which constitute Permitted Cash Equivalent Investments of the kinds described in **clauses (i)** through **(v)** of this definition.

"***Permitted Indebtedness***" means any Indebtedness permitted under **Section 9.01**.

"***Permitted Liens***" means any Liens permitted under **Section 9.02**.

"***Permitted Pre-Petition Liens***" has the meaning set forth in **Section 7.18**.

"***Permitted Variance***" shall have the meaning specified in the Interim DIP Order prior to entry of the Final DIP Order, and the Final DIP Order thereafter.

"***Person***" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"***Petition Date***" has the meaning specified in the recitals hereto.

"***PIK Interest***" has the meaning set forth in **Section 3.02(d)**.

"***PIK Loan***" has the meaning set forth in **Section 3.02(d)**.

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Prepayment Date***" has the meaning set forth in **Section 3.03(b)**.

"***Prepayment Price***" has the meaning set forth in **Section 3.03(b)**.

"***Pre-Petition Credit Agreement***" means the Credit Agreement and Guaranty, dated as of January 24, 2022, by and among the Borrower, certain subsidiaries of the Borrower from time to time party thereto, the Lenders from time to time party thereto and the Administrative Agent, as amended, supplemented or otherwise modified from time to time.

"***Pre-Petition Debt***" means the Indebtedness of the Debtor outstanding and unpaid on the Petition Date.

"***Pre-Petition Payment***" means a payment, directly or indirectly, by way of adequate protection or otherwise of principal or interest or otherwise on account of any (a) Pre-Petition Debt, (b) "critical vendor payments" or (c) trade payables (including, without limitation, in respect of reclamation claims) or other pre-petition claims against the Debtor.

"***Priming Liens***" has the meaning set forth in **Section 7.18**.

"***Proceeding***" has the meaning set forth in **Section 14.03(b)**.

"***Product***" means all CRISPR reagents, oligonucleotide products, kits and CRISPR engineered cell product offerings sold by the Borrower that are in process of development or developed, distributed, imported, exported, labeled, promoted, licensed, marketed, sold or

otherwise subject to Commercialization and Development by or on behalf of the Borrower or any of its Subsidiaries at any time, including by way of an outbound license or similar arrangement to a third party for Commercialization and Development.

"***Product Related Information***" means, with respect to any Product, all books, records, lists, ledgers, files, manuals, Contracts, correspondence, reports, plans, drawings, data and other information of every kind (in any form or medium), including related to Intellectual Property, and all techniques and other know-how, that is necessary or useful for the Commercialization and Development of any such Product, including (i) branding materials, packaging and other marketing, promotional and sales materials and information, (ii) clinical data, information included or supporting any related Governmental Approval or Healthcare Permit and all other documents, records, files, data and other information necessary to or useful for the Commercialization and Development of any Product, (iii) litigation and dispute records, and accounting records, and (iv) all other Technical Information, techniques and know-how necessary or useful in connection with any such Commercialization and Development of any Product.

"***Prohibited Payment***" means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any applicable Law for the purpose of influencing any act or decision of such payee in his official capacity, inducing such payee to do or omit to do any act in violation of his lawful duty, securing any improper advantage or inducing such payee to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

"***Proportionate Share***" means, with respect to each Lender, the percentage obtained by dividing (i) the sum of all Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of all Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

"***Public Offering***" means, with respect to any Person, any sale of Equity Interests of such Person pursuant to an offering that is underwritten on a firm commitment basis by a nationally recognized investment banking firm and, as a result of which, such Person becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act immediately following such offering.

"***Qualified Equity Interest***" means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

"***Qualified Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

"***Real Property Security Documents***" means any Landlord Consents, Bailee Letters, any mortgage or deed of trust or any other real property security document executed or required hereunder to be executed by any Obligor and granting a security interest in real property owned or leased (as tenant) by any Obligor in favor of the Secured Parties for purposes of securing the Obligations.

"***Recipient***" means any Lender, the Administrative Agent or any other recipient of any payment to be made by or on account of any Obligation, as applicable.

"***Reference Rate***" means One-Month Term SOFR; provided that if One-Month Term SOFR can no longer be determined by the Administrative Agent for any reason (in its sole discretion, which determination shall be conclusive absent manifest error or demonstrable), including as a result of the Term SOFR Reference Rate not being available or published on a current basis or as a result of the occurrence of a Reference Rate Transition Event, then the Administrative Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to One-Month Term SOFR that gives due consideration to the then prevailing market convention for determining a rate of interest for middle-market loans in the United States at such time, and 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; provided, further that, until such alternate rate of interest is agreed upon by the Administrative Agent and the Borrower, the Reference Rate for purposes hereof and of each other Loan Document shall be the Wall Street Journal Prime Rate.

"***Reference Rate Transition Event***" means the occurrence of one or more of the following events with respect to the Reference Rate then in effect:

(a) a public statement or publication of information by or on behalf of the administrator of such Reference Rate (or the published component used in the calculation thereof) stating that such administrator has ceased or will cease to provide such Reference Rate (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Reference Rate (or such component thereof);

(b) a public statement or publication of information by the Governmental Authority governing or regulating the administrator of such Reference Rate (or the published component used in the calculation thereof), the U.S. Federal Reserve System, an insolvency official with jurisdiction over the then-current administrator for such Reference Rate (or such component thereof), a resolution authority with jurisdiction over the then-current administrator for such Reference Rate (or such component thereof) or a court or an entity with similar insolvency or resolution authority over the administrator for such Reference Rate (or such component thereof), which in any case states that the then-current administrator of such Reference Rate (or such component thereof) has ceased or will cease to provide such Reference Rate (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Reference Rate (or such component thereof); or

(c) a public statement or publication of information by the Governmental Authority governing or regulating the then-current administrator of such Reference Rate stating that such Reference Rate (or the published component used in the calculation thereof) is no longer, or as a of a specified future date will not be, representative.

A "Reference Rate Transition Event" will be deemed to have occurred with respect to any Reference Rate if a public statement or publication of information set forth above has occurred with respect to each then-current available tenor of such Reference Rate (or the published component used in the calculation thereof).

"***Referral Source***" has the meaning set forth in **Section 7.07(c)**.

"***Register***" has the meaning set forth in **Section 14.05(d)**.

"***Regulation T***" means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation X***" means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

"***Related Fund***" means, with respect to any Lender, a fund which is managed or advised by the same investment manager or investment adviser as such Lender or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of such Lender.

"***Related Parties***" has the meaning set forth in **Section 14.16**.

"***Reporting Date***" has the meaning set forth in **Section 8.01(o)**.

"***Resolution Authority***" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"***Responsible Officer***" of any Person means each of the president, chief executive officer, chief financial officer, chief accounting officer, treasurer, general counsel and similar officer of such Person.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of the Borrower or any of its Subsidiaries, any payment of interest, principal or fees in respect of any Indebtedness owed by the Borrower or any of its Subsidiaries to any holder of any Equity Interests of the Borrower or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of the Borrower or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of the Borrower or any of its Subsidiaries.

"***Restrictive Agreement***" means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of the Borrower or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its properties or assets (other than (x) customary provisions in Contracts (including without limitation leases and licenses of Intellectual Property) restricting the assignment thereof and (y) restrictions or conditions imposed by any Contract governing secured Permitted Indebtedness permitted under **Section 9.01(g)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of the Borrower or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to the Borrower or any of its Subsidiaries or such other Obligor or to Guarantee Indebtedness of the Borrower or any of its Subsidiaries thereof or such other Obligor.

"***Revenue***" means, for any relevant fiscal period, the consolidated total revenues of the Borrower and its Subsidiaries for such fiscal period resulting from the Commercialization and Development of Products in the ordinary course of business, as recognized on the consolidated income statement of the Borrower and its Subsidiaries for such fiscal period, determined on a consolidated basis in accordance with GAAP.

"***Roll-Up Facility***" has the meaning specified in the recitals hereto.

"***Roll-Up Loan***" has the meaning specified in **Section 2.03**.

"***Roll-Up Loan Amount***" means, with respect to any Lender at the time of any borrowing, such Lenders Proportionate Share of $37,500,000.

"***Sale***" has the meaning specified in the definition of "APA".

"***Sanction***" means any international economic sanction administered or enforced by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union or its Member States, Her Majesty's Treasury or other relevant sanctions authority.

"***Secured Party***" means each Lender, the Administrative Agent, each other Indemnified Party, any other holder of any Obligation, and any of their respective permitted transferees or assigns.

"***Securities Account***" means any securities account, as such term is defined in Section 8-501 of the NY UCC.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Security Agreement***" means any security agreement among the Obligors required to be a party thereto, as the grantors and the Administrative Agent, granting a security interest in such Obligors' personal property in favor of the Administrative Agent.

"***Security Documents***" means, collectively, each Security Agreement (if any), each Real Property Security Document (if any), each Short-Form IP Security Agreement (if any), the DIP

Orders, and each other security agreement, control agreement or financing statement, registration, recordation, filing, instrument or approval required, entered into or recommended to grant, perfect and otherwise render enforceable Liens in favor of the Secured Parties for purposes of securing the Obligations, including (without limitation) pursuant to **Section 8.12**.

"***Senior Subordinated Note Purchase Agreement***" means that certain Note Purchase Agreement, dated as of March 20, 2024 between the Borrower and the certain investors party thereto.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements, substantially in the form Exhibit C, Exhibit D or Exhibit E to the Security Agreement, entered into by one or more Obligors in favor of the Secured Parties, each in form and substance reasonably satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time).

"***SOFR***" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

"***Specified Material Intellectual Property***" means any Obligor Intellectual Property including the Intellectual Property listed on **Schedule 7.05(b)(i)** that both: (i) qualifies as Material Intellectual Property and (ii) is (or is anticipated to be) used in the ordinary course of business of the Company or any of its Subsidiaries for the Commercialization and Development of any of their respective Products.

"***Specified Permitted Lien***" means any Lien permitted under **Sections 9.02(a)**, **(d)**, **(e)**, **(f)**, **(i)**, **(j)** and **(l)**.

"***Stalking Horse APA***" means the asset purchase agreement by and among an Affiliate of the Administrative Agent, as the purchaser, and the Borrower, as the seller.

"***Subsequent Convertible Note Holders***" means the "Investors" as defined in Amendment No. 3.

"***Subsidiary***" means, with respect to any Person (for purposes of this definition, the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more direct or indirect subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, all

references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower

"***Superpriority Claim***" means a claim against the Debtor in the Case which is an administrative expenses claim having priority over any or all administrative expenses in the Case, including administrative expenses of the kind that are specified in, or contemplated by, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code.

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

"***Technical Information***" means all trade secrets and other proprietary or confidential information, public information, non-proprietary know-how, any information of a scientific, technical, or business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Invention disclosures, all documented research, developmental, demonstration or engineering work and all other information, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs, information technology and any other information.

"***Term SOFR Administrator***" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"***Term SOFR Reference Rate***" means the forward-looking term rate based on SOFR.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Trademarks***" means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including (i) all renewals of trademark and service mark registrations, (ii) all rights to recover for all past, present and future infringements thereof and all rights to sue therefor, and (iii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof.

"***Transactions***" means the negotiation, preparation, execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is (or is intended to be) a party, the making of the Loans hereunder, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents.

"***UCC***" means, with respect to any applicable jurisdictions, the Uniform Commercial Code as in effect in such jurisdiction, as may be modified from time to time.

"***UK Financial Institution***" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"***UK Resolution Authority***" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"***United States***" or "***U.S.***" means the United States of America, its fifty (50) states and the District of Columbia.

"***Updated Budget***" has the meaning ascribed to such term in **Section 8.01(o)**.

"***U.S. Government Securities Business Day***" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a 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."

"***U.S. Person***" means a "United States person" as defined in Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning set forth in **Section 5.03(f)(ii)(B)(3)**.

"***Variance Period***" means as of the last day of any full calendar week covered in the applicable Approved Budget (commencing with the first Business Day of the fourth full week after the Petition Date), the period then ended measured from the first day of the first full calendar week covered in such Approved Budget; provided that such period shall in no event exceed the four calendar week period ending with the week then ended.

"***Variance Report***" has the meaning ascribed to such term in **Section 8.01(p)**.

"***Wall Street Journal Prime Rate***" means the Wall Street Journal Prime Rate, as published and defined in The Wall Street Journal.

"***Wholly-Owned Subsidiary***" means a Subsidiary of the Borrower as to which (i) the Borrower owns one hundred percent (100%) of the Equity Interests of such Subsidiary and (ii) all such Equity Interests have been pledged to the Administrative Agent pursuant to any Security Document and subject to a valid and enforceable first priority Lien in favor of the Administrative Agent.

"***Withdrawal Liability***" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

"***Withholding Agent***" means the Borrower, any other Obligor and the Administrative Agent.

"***Write-Down and Conversion Powers***" means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Accounting Terms and Principles.

(a) Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication.

(b) If at any time any change in GAAP or the application thereof would affect the computation of any financial term, covenant, ratio or requirement set forth in any Loan Document, and either the Borrower or the Administrative Agent shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such term, covenant, ratio or requirement to preserve the original intent thereof set forth in the applicable Loan Document in light of such change in GAAP or application thereof; provided that, until so amended, such term, covenant, ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein for all purposes hereof.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires,

(a) the terms defined in this Agreement include the plural as well as the singular and vice versa;

(b) words importing gender include all genders;

(c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;

(d) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;

(e) references to days, months and years refer to calendar days, months and years, respectively;

(f) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation";

(g) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including";

(h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property;

(i) accounting terms not specifically defined herein (other than "property" and "asset") shall be construed in accordance with GAAP;

(j) the word "will" shall have the same meaning as the word "shall";

(k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly; and

(l) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall be deemed to be a Lien for the benefit of the Secured Parties; and

(m) references to any Law will include all statutory and regulatory provisions amending, consolidating, replacing, supplementing or interpreting such Law from time to time.

Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents.

If any obligation to pay any amount pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day. For the purposes of calculations made pursuant to the terms of this Agreement or otherwise for purposes of compliance herewith, GAAP will be deemed to treat operating leases in a manner consistent with their current treatment under GAAP as in effect on the date of this Agreement, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

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

1.05 Reference Rate Replacement. Upon the occurrence of an event of the type described in the first proviso of the definition of "Reference Rate", the Administrative Agent will promptly notify the Borrower thereof and, as set forth in such proviso, the Administrative Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to One-Month Term SOFR; provided that there is no assurance that the composition or characteristics of any such alternative, successor or replacement Reference Rate will be similar to or produce the same value or economic equivalence as One-Month Term SOFR or that it will have the same volume or liquidity as did One-Month Term SOFR prior to its discontinuance or unavailability.

1.06 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (i) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or One-Month Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto, including whether the composition or characteristics of any such alternative, successor or replacement rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate or One-Month Term SOFR prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate or One-Month Term SOFR, any alternative, successor or replacement rate or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate or One-Month Term SOFR, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 2
THE COMMITMENTS AND THE LOANS

2.01 New Money Loans.

(a) On the terms and subject to the conditions of this Agreement and the DIP Orders, each Lender agrees to make (i) its Initial Loan on the Closing Date to the Borrower, in an aggregate principal amount for all Lenders not to exceed $$5,000,000 and (ii) Delayed Draw Loans to the Borrower, in one or more borrowing on any Delayed Draw Borrowing Date, in an aggregate principal amount for all Lenders and all such Delayed Draw Loan borrowings not to exceed $7,500,000.

(b) No amounts repaid or prepaid with respect to any Loan may be reborrowed.

(c) The Borrower may not borrow (x) less than an aggregate principal amount of $1,000,000 in any single borrowing of Delayed Draw Loans or (y) more than an amount necessary to fund authorized expenditures for a period of thirty (30) days following the applicable Delayed Draw Borrowing Date as reflected on the most recently delivered Approved Budget.

(d) There shall be no more than four (4) borrowings of Delayed Draw Loans.

(e) The Borrower may not request a new borrowing of Delayed Draw Loans earlier than ten (10) Business Days after the most recent borrowing of Delayed Draw Loans.

(f) Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made to the Borrower will be denominated solely in Dollars and no other currency.

2.02 Borrowing Procedures. Unless the Administrative Agent otherwise agrees in writing, at least three (3) Business Days prior to any proposed Closing Date, the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice, which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (New York City time) on a Business Day, shall be deemed to have been delivered on the next Business Day.

2.03 Roll-Up Loans. Subject to the terms and conditions set forth herein and in the DIP Orders, (x) upon entry of the Interim DIP Order, $12,500,000 of Existing First Lien Obligations held by each Lender on such date shall be substituted, exchanged and deemed to be converted into Loans made hereunder (the "***Roll-Up Loans***"), and (y) upon entry of the Final DIP Order, an aggregate principal amount of Existing First Lien Obligations held by each Lender on such date shall be substituted, exchanged and deemed to be converted into Roll-Up Loans in an aggregate principal amount equal to the remaining amount of such Lender's Roll-Up Loan Amount. All Roll-Up Loans deemed made hereunder shall constitute Indebtedness owing by the Borrower hereunder to the Lenders, shall be secured by a perfected lien and security interest on all Collateral and shall constitute and qualify as Superpriority Claims, subject to (i) the priorities set forth in the DIP Order, and (ii) Permitted Liens; provided that, subject to (and without limiting) the foregoing, the Roll-Up Loans shall be secured by and entitled to the benefits of all Liens and security interests created and arising under the Loan Documents (as defined in the Pre-Petition Credit Agreement), which Liens and security interests shall, with respect to the Roll-Up Loans, remain in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, and have the same perfected status and priority, as if such Existing First Lien Obligations had not been so substituted, exchanged or deemed to be converted. In addition, subject to the terms and conditions set forth herein and in the DIP Order, as of the time any Lender's Roll-Up Loan is deemed to be made hereunder, such Roll-Up Loan shall, from and after such time, be designated as such and shall be administered hereunder and subject to the terms hereof. Amounts of Roll-Up Loans that are issued or deemed issued under this **Section 2.03** that are repaid or prepaid may not be reborrowed.

2.04 Notes. If requested by any Lender, any Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such Notes in the form attached hereto as **Exhibit A**.

2.05 Use of Proceeds. The Borrower shall use the proceeds of the Loans for purposes of the following, in each case, in accordance with the Approved Budget: (i) effectuating a sale of substantially all of the assets of the Debtor with a liquidating chapter 11 plan to follow, (ii) general corporate and working capital purposes, (iii) costs of administration of the Case, including the reasonable fees and expenses of the Borrower's advisors (subject to the Carve-Out), and (iv) payment of all reasonable and documented accrued and unpaid transaction costs, fees and expenses

with respect to this Agreement and the other Loan Documents, including the fees and expenses of professional advisors to the Administrative Agent.

SECTION 3
PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayments and Prepayments Generally; Application.

(a) There will be no scheduled repayments of principal on the Loans prior to the Maturity Date.

(b) On the Maturity Date, the Borrower shall repay the entire remaining outstanding principal balance of the Loans in full and in cash.

(c) The Obligors agree that all amounts payable hereunder or under any other Loan Document, whether in respect of any Loans, fees or interest accrued or accruing thereon, costs or expenses, or any other Obligations, shall be paid, repaid and prepaid, as the case may be, solely in Dollars pursuant to the terms of this **Section 3**. Except as otherwise provided in this Agreement, proceeds of each payment (including each repayment and prepayment of Loans) by any Obligor shall be deemed to be made ratably to the Lenders in accordance with their respective Proportionate Shares.

3.02 Interest.

(a) **Interest Generally**. The outstanding principal amount of the Loans shall accrue interest at the Interest Rate on and from the Closing Date. The Administrative Agent's determination of the Interest Rate shall be binding on the Borrower, its Subsidiaries and the Lenders in the absence of manifest error.

(b) **Default Interest**. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Applicable Margin shall increase automatically by three percent (3.0%) per annum (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "***Default Rate***"). If any Obligation is not paid when due under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) **Interest Payment Dates**. Subject to **clause (d)** immediately below, accrued interest on the Loans shall be payable in cash, in arrears, on each Payment Date with respect to the most recently completed Interest Period, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate, or any accrued interest not paid on or before the Maturity Date, shall be payable from time to time in cash on the Administrative Agent's demand until paid in full.

(d) **PIK Interest**. Any term or provision hereof to the contrary notwithstanding, so long as no Event of Default has occurred, interest accrued during any Interest Period shall be payable "in kind" ("***PIK Interest***") on the Payment Date applicable to any such Interest Period. PIK Interest shall be capitalized and added to the outstanding principal amount of the Loans on the Payment Date applicable to such Interest Period, and such PIK Interest shall be deemed to be a Loan made hereunder by the Lenders (any such Loan being a "***PIK Loan***"). The aggregate

principal amount of any PIK Loan will be equal to the amount of such PIK Interest paid "in kind" by the Borrower on the applicable Payment Date. For purposes of this Agreement and the other Loan Documents, each PIK Loan will bear interest (which shall be due and payable) in accordance with this **Section 3**. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, upon the occurrence of any Event of Default, interest on the Loans shall no longer be payable in the form of PIK Interest and all accrued and unpaid interest outstanding as of, and all interest accruing after, the occurrence of such Event of Default must be paid in cash as provided herein.

(e) **Conforming Changes**. In connection with the use or administration of One-Month Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of One-Month Term SOFR.

(f) **Compensation for Losses**. In the event of the payment of any principal of any Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), then, in any such event, the Borrower shall compensate each Lender for any loss, cost or expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this **Section 3.02(f)** shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. This **Section 3.02(f)** shall not apply with respect to Taxes other than any Taxes that represent Losses arising from any non-Tax loss, cost or expense.

3.03 Prepayments; Prepayment Premium.

(a) **Optional Prepayments**. The Borrower shall not have the right to optionally prepay, in whole or in part, the outstanding principal amount of the Loans prior to the Maturity Date.

(b) **Mandatory Prepayments**. Within five (5) Business Days of the receipt of Net Cash Proceeds from the occurrence of any Casualty Event or Asset Sale (each such date, a "***Prepayment Date***"), the Borrower shall apply an amount equal to one hundred percent (100%) of the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to such Casualty Event or Asset Sale, as the case may be, to (i) the prepayment of outstanding Loans, (ii) the payment of accrued and unpaid interest on the principal amount of the Loans being prepaid and the payment of the Exit Fee, if applicable (such aggregate amount of Exit Fee, prepaid principal and accrued interest being herein referred to as the "***Prepayment Price***"). Such Net Cash Proceeds shall be allocated to such prepayment and payments such that the full amount of the applicable Prepayment Price shall be paid with such Net Cash Proceeds.

(c) **[Reserved]**.

(d) **Application**. Proceeds of any prepayment made pursuant to **clauses (a)** or **(b)** above shall be applied in the following order of priority, with proceeds being applied to a succeeding level of priority only if amounts owing pursuant to the immediately preceding level of priority have been paid in full in cash; provided that all such prepayments made to Lenders shall be applied in accordance with their respective Proportionate Shares:

(i) first, to the payment of that portion of the Obligations payable to the Administrative Agent constituting fees, indemnities, costs, expenses, and other amounts then due and owing (including fees and disbursements and other charges of counsel payable under **Section 14.03**);

(ii) second, to the payment of that portion of the Obligations payable to the Lenders constituting fees (including Exit Fees), indemnities, expenses, and other amounts then due and owing (including fees and disbursements and other charges of counsel payable under **Section 14.03**) ratably among them in proportion to the respective amounts described in this **clause (ii)** payable to them;

(iii) third, to the payment of any accrued and unpaid interest and any fees then due and owing;

(iv) fourth, to the payment of unpaid principal of the Loans;

(v) fifth, to the payment in full of all other Obligations then due and payable to the Administrative Agent and the Lenders, ratably among them in proportion to the respective amounts described in this **clause (v)** payable to them; and

(vi) sixth, to the Borrower or such other Persons as may lawfully be entitled to or directed by the Borrower to receive the remainder.

3.04 Closing Fee. The Borrower shall pay to the Administrative Agent (for the benefit of the Lenders) a fee equal to one percent (1.00%) of the total amount of the Loan (the "***Closing Fee***"), which Closing Fee shall be due and payable on the earliest of the Maturity Date and the date the Obligations are paid in full or become due and payable. The Closing Fee shall be fully earned on the Closing Date. Upon receipt of payment from the Borrower, the Administrative Agent will promptly thereafter distribute like funds relating to any such payment to the Lenders pro rata on the basis of each Lender's Proportionate Share. Once earned by the Borrower, such Closing Fee shall be non-refundable.

3.05 Exit Fee. On the date of each payment, repayment or prepayment of all or any portion of the principal amount of any Loans, whether as a result of voluntary or involuntary, scheduled amortization (including pursuant to **Section 3.01(a)**), mandatory prepayment or repayment, acceleration or otherwise, and whether on, prior to or after the scheduled Maturity Date, the Borrower shall pay to the Administrative Agent a fully-earned and nonrefundable exit fee equal to four percent (4.00%) of the principal amount of any such Loan so paid, repaid or prepaid. Any such exit fee paid by the Borrower pursuant to this **Section 3.05** shall be hereinafter referred to as an "***Exit Fee***", shall be payable in cash on the date of such payment, repayment or prepayment by wire transfer of immediately available funds and shall be non-refundable once paid. Upon receipt of payment from the Borrower of any Exit Fee, the Administrative Agent will promptly thereafter

distribute like funds relating to any such payment to the Lenders pro rata on the basis of each Lender's Proportionate Share. Until payment in full in cash of all Obligations (other than inchoate indemnity and expense reimbursement obligations for which no claim has been made), all Exit Fees shall continue to be due and payable, including after the occurrence of the Maturity Date or any Event of Default, acceleration or otherwise.

SECTION 4
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally**. Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (New York City time) on the date on which such payment is due (each such payment made after such time on such due date shall be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments**. All such payments referenced in **clause (a)** above shall be applied as set forth in **Section 3.03(d)** above.

(c) **Non-Business Days**. If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day; provided that if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable.

4.03 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Administrative Agent, any Lender or any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations now or hereafter existing under any Loan Document, whether or not such Person shall have made any demand and although such obligations may be contingent or unmatured. Any Person exercising rights of set off hereunder agrees to promptly notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required**. Nothing contained in **Section 4.03(a)** shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of any Obligor.

(c) **Payments Set Aside**. To the extent that any payment by or on behalf of any Obligor is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent, or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

(d) To the extent permitted under applicable Law, any Participant acquiring a participation pursuant to **Section 14.05(e)** hereof (as well as any Lender acquiring a participation pursuant to **Section 3.03(e)** hereof) may exercise against the Obligors rights of setoff and counterclaim with respect to such participation as fully as if such Participant was a direct creditor of the Obligor in the amount of such participation.

SECTION 5
YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Changes in Law Generally**. If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of any Law, or any change in any applicable Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of Law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement) against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or other Recipient or shall impose on a Lender (or its lending office) or other Recipient any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender or other Recipient of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender or other Recipient under this Agreement or any other Loan Document, or subject any Lender to any Taxes on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto by an amount deemed by such Lender to be material (other than (i) Indemnified Taxes, (ii) Taxes described in **clauses (ii)** through **(iv)** of the definition of "**Excluded Taxes**" and

(iii) Connection Income Taxes), then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of any applicable Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), has had or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have reasonably been expected to achieve but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. Each Lender shall promptly notify the Borrower of any event of which it has knowledge, occurring after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder and also setting forth in reasonable detail the basis for calculating the additional amounts claimed to be owed to such Lender, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) **Delays in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs unless the Lender notifies the Borrower within two hundred seventy (270) days following the receipt by such Lender of its audited financial statements of the change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor.

(e) **Other Changes**. Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of or any change in any applicable Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which (i) such Lender's Commitment shall be suspended until such time as such Lender may again make and maintain the Loans hereunder and (ii) if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Prepayment Price applicable on such Prepayment Date in accordance with **Section 3.03(a)**.

5.03 Taxes.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5.03**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower**. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent or each Lender, timely reimburse it for the payment of any Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5**, the Borrower shall deliver to the Administrative Agent a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent, including upon request by the Administrative Agent, a copy of a receipt reasonably obtainable from such Governmental Authority evidencing such payment.

(d) **Indemnification by the Borrower**. The Borrower shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the

Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders**. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 14.05(g)** relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by (or withheld from payments to) the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **clause (e)**.

(f) **Status of Lenders**.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that, other than in the case of U.S. federal withholding Taxes, such Lender has received written notice from the Borrower advising it of the availability of such exemption or reduction and containing all applicable documentation. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent shall deliver such other documentation prescribed by applicable Law as reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(f)(ii)(A), (ii)(B),** and **(ii)(D)**) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or could materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or

the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit D-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "***U.S. Tax Compliance Certificate***") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate, substantially in the form of **Exhibit D-2** or **Exhibit D-3**, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-4** on behalf of each such direct and indirect partner.

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

such applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

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

(g) **Treatment of Certain Tax Benefits**. If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5.03** (including by the payment of additional amounts pursuant to this **Section 5.03**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5.03** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 5.03** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(g)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(g)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 5.03(g)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) **Mitigation Obligations**. If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.03**, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to

another of its offices, branches or Affiliates if, in the sole, reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(i) **Survival**. Each party's obligations under this **Section 5.03** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 6
CONDITIONS PRECEDENT

6.01 Conditions to the Borrowing of the Initial Loan on the Closing Date. The obligation of the Closing Date Lender to make the Initial Loan on the Closing Date shall be subject to the execution and delivery of this Agreement by the parties hereto, the delivery of a Borrowing Notice and the prior or concurrent satisfaction (or waiver thereof by the Administrative Agent) of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from each Obligor party to a Loan Document on the Closing Date:

(i) a copy of a good standing certificate or the equivalent thereof, dated a date reasonably close to the Closing Date, for each such Person and

(ii) a certificate, dated as of the Closing Date, duly executed and delivered by such Person's secretary or assistant secretary, managing member, general partner or equivalent, as to:

(A) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document and the Transactions, to be executed and delivered by such Person;

(B) the incumbency and signatures of those of its officers, managing member or general partner or equivalent authorized to act with respect to each Loan Document to be executed and delivered by such Person; and

(C) true and complete copies of each Organic Document of such Person and copies thereof;

which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the secretary, assistant secretary, managing member, general partner or equivalent of any such Person cancelling or amending the prior certificate of such Person.

(b) **[Reserved]**.

(c) **Closing Date Certificate**. The following statements shall be true and correct, and the Administrative Agent shall have received a certificate, dated as of the Closing Date and in form and substance satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower certifying that: (i) both immediately before and after giving effect to the Initial Loan on the Closing Date, (x) the representations and warranties set forth in each Loan Document that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct, (y) the representations and warranties set forth in each Loan Document that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects, and (z) no Event of Default has occurred and is continuing, or could reasonably be expected to result from the making of the Initial Loan being advanced, or the consummation of any Transactions contemplated to occur on the Closing Date, and (ii) all of the conditions set forth in this **Section 6.01** have been satisfied (except to the extent waived in writing by the Administrative Agent). All documents and agreements required to be appended to the certificate delivered pursuant to this **Section 6.01(c)**, if any, shall be in form and substance satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties, and shall be in full force and effect.

(d) **Delivery of Notes**. The Administrative Agent shall have received a Note in favor of each Lender evidencing such Lender's Initial Loan, duly executed and delivered by a Responsible Officer of the Borrower.

(e) **[Reserved].**

(f) **[Reserved].**

(g) **Security Documents**. The Administrative Agent shall have received executed counterparts of all Security Documents by all Obligors, each dated as of the date hereof, duly executed and delivered by each Obligor, together with:

(i) The delivery of all certificates (in the case of Equity Interests that are securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by the Borrower and each Subsidiary that are required to be pledged under any Security Document, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the UCC), confirmation and evidence satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under any Security Document has been transferred to and perfected by the Administrative Agent for the benefit of the Secured Parties in accordance with Articles 8 and 9 of the NY UCC and all Laws otherwise applicable to the perfection of the pledge of such Equity Interests;

(ii) financing statements naming each Obligor as a debtor and the Administrative Agent as the secured party, or other similar instruments, registrations, or documents, in each case suitable for filing, filed under the UCC (or equivalent Law) of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Liens of the Secured Parties pursuant to any Security Document;

(iii) UCC-3 termination statements, as may be necessary to release all Liens (other than Permitted Liens) and other rights of any Person in any collateral described in any Security Document previously granted by any Person;

(iv) evidence that all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of the Borrower (except for any Excluded Accounts) are Controlled Accounts;

(v) evidence that all such Controlled Accounts are subject to one or more account control agreements, in favor of, and satisfactory in form and substance to, the Administrative Agent; and

(vi) all Short-Form IP Security Agreements required to be provided under the Security Agreement, each dated as of the Closing Date, duly executed and delivered by the Borrower.

(h) **Lien Searches**. The Administrative Agent shall be reasonably satisfied with Lien searches regarding the Borrower and its Subsidiaries made within thirty (30) days prior to the Closing Date.

(i) **[Reserved]**.

(j) **Initial Budget**. The Administrative Agent shall have received the Initial Budget and evidence satisfactory to it that the Initial Loans shall be used for an authorized purpose pursuant to the Initial Budget.

(k) **First Day Orders**. The Administrative Agent shall be reasonably satisfied with the form and substance of the "first day orders" sought by the Borrower and entered on (or prior to) the Closing Date. The "first day orders" and all related pleadings shall have been entered by the Bankruptcy Court.

(l) **Approval of the Agreement**. The Borrower shall have filed a motion seeking approval of the Loan facilities set forth in this Agreement by no later than one (1) Business Day after the Petition Date.

(m) **Milestones**. The Administrative Agent shall have received evidence satisfactory to it that the Borrower is in compliance with the Milestones as of the Borrowing Date.

(n) **No Trustee**. No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Case.

(o) **Material Adverse Change**. No Material Adverse Change shall have occurred since the Petition Date (other than the Case and the consequences that would normally result from the commencement, continuation and prosecution of the Case).

(p) **Anti-Terrorism Laws**. The Administrative Agent shall have received, as applicable, all documentation and other information required by bank regulatory authorities

requested by the Administrative Agent or any Lender prior to the Closing Date with respect to applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

(q) **All Other Loan Documents**. The Administrative Agent shall have received all other Loan Documents in form and substance reasonably satisfactory to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, documents or instruments as the Administrative Agent and its counsel may reasonably request.

(r) **Satisfactory Legal Form**. All documents, including any attachments or appendices thereto, executed, delivered or submitted pursuant hereto by or on behalf of the Borrower or any of its respective Subsidiaries shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, documents or instruments as the Administrative Agent or its counsel may reasonably request.

(s) **Fees, Expenses, Etc**. The Administrative Agent shall have received for its account and the account of each Lender, all pre-petition and post-petition fees, costs and expenses due and payable pursuant to **Section 14.03**, including all closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' reasonable legal fees and expenses).

6.02 Conditions to Borrowing of any Delayed Draw Loans on a Delayed Draw Borrowing Date. The obligation of each Lender to make its portion of any Delayed Draw Loan on a Delayed Draw Borrowing Date shall be subject to the delivery of a Borrowing Notice as required pursuant to **Section 2.02** and the prior or concurrent satisfaction of the conditions precedent set forth below in this **Section 6.02**.

(a) **Delayed Draw Borrowing Date Certificate**. The following statements shall be true and correct, and the Administrative Agent shall have received a certificate, dated as of the Delayed Draw Borrowing Date (the "***Delayed Draw Borrowing Date Certificate***"), in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower representing, warranting and certifying that: (i) both immediately before and immediately after giving effect to the Borrowing of the Delayed Draw Loans, the representations and warranties set forth in each Loan Document (other than the representations and warranties contained in **Sections 7.04(b)** and **7.11** (as in effect immediately prior to the Amendment No. 6 Effective Date) and any substantially similar representations or warranties in the other Loan Documents), (x) that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct as of such earlier date, (y) that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date, and (z) no Event of Default has occurred and is continuing, or could reasonably be expected to result from the Borrowing of the Delayed Draw

Loans or the consummation of any Transactions contemplated to occur on the Delayed Draw Borrowing Date and (ii) all of the conditions set forth in this **Section 6.02** have been satisfied (except to the extent waived in writing by the Administrative Agent) except to the extent such condition relates to the satisfaction or approval in form or substance of any documents by the Administrative Agent; provided that, with respect to the representation, warranty and certification referenced in clauses (x) and (y) above relating to representations and warranties set forth in each Loan Document, (1) references in such representations and warranties to "the Closing Date" or "the date hereof" shall be deemed to be references to "the Delayed Draw Borrowing Date" and (2) the Borrower may supplement the schedules to this Agreement and the other Loan Documents as reasonably necessary in order for such certification to be true and correct on the Delayed Draw Borrowing Date; provided, further, that no such supplement shall be permitted if the Administrative Agent reasonably determines that the circumstance or event necessitating such supplement either (A) was the result of the occurrence and continuance of an Event of Default, or (B) constituted a Material Adverse Effect or (with respect to any supplement that does not reflect an action or transaction permitted by this Agreement) was otherwise materially adverse to the interests of the Lenders under the Loan Documents.

(b) **Approved Budget**. The Administrative Agent shall have received the most recent Approved Budget and evidence satisfactory to it that the Delayed Draw Loans shall be used for an authorized purpose pursuant to the Approved Budget.

(c) **Milestones**. The Administrative Agent shall have received evidence satisfactory to it that the Borrower is in compliance with the Milestones as of the Borrowing Date.

(d) **Final DIP Order**. The Final DIP Order shall have been entered by the Bankruptcy Court in form and substance satisfactory to the Administrative Agent and shall be in full force and effect and shall not have been vacated, stayed, reversed, overturned or modified in any respect without the written consent of the Administrative Agent.

(e) **Compliance with DIP Orders**. The Borrower shall be in compliance with the DIP Orders.

(f) **Fees, Expenses, Etc**. The Administrative Agent shall have received for its account and the account of each Lender, all pre-petition and post-petition fees, costs and expenses due and payable pursuant to **Section 14.03**, including all closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses).

SECTION 7
REPRESENTATIONS AND WARRANTIES

The Borrower and each other Obligor hereby jointly and severally represent and warrant to the Administrative Agent and each Lender that:

7.01 Power and Authority. The Borrower and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) subject to entry of the DIP Orders, has all requisite corporate or other power, and has all Governmental Approvals necessary to own or lease its assets (other than with respect to Material Intellectual Property, which

is covered exclusively in **Section 7.05(b)**) and carry on its business as now being or as proposed to be conducted, including all Healthcare Permits, other than could not reasonably be expected to materially and adversely impact the Borrower's and its Subsidiaries' business, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (iv) subject to entry of the DIP Orders, has full power, authority and legal right to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. Each Transaction to which the Borrower or any of its Subsidiaries is a party (or to which it or any of its assets or properties is subject) are within such Person's corporate or other powers and have been duly authorized by all necessary corporate action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by each Obligor and, subject to entry of the DIP Orders, constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by the Borrower or any of its Subsidiaries, subject to entry of the DIP Orders, will constitute, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights, and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. Subject to entry of the DIP Orders, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person (other than those that have been duly obtained or made and which are in full force and effect) is required in connection with the due execution, delivery or performance by, or enforcement against, the Borrower or any of its Subsidiaries of any Loan Document to which it is a party, except for such approvals, consents, exemptions, authorizations, actions or notices (including such filings and recordings that have been or will be made on the Closing Date in respect of perfecting or recording the Liens created pursuant to the Security Documents) that have been duly obtained, taken or made and that are in full force and effect. None of the Transactions will (i) violate or conflict with any Law, other than any such violation that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (ii) violate or conflict with any Organic Document of the Borrower or any of its Subsidiaries, (iii) violate or conflict with any Governmental Approval of any Governmental Authority binding upon the Borrower or any of its Subsidiaries, (iv) violate or result in a default under any Material Agreement, or (v) result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Borrower or any of its Subsidiaries. The Borrower, its Subsidiaries and their respective properties and businesses are in compliance in all material respects with all applicable Laws (including Healthcare Laws) and Governmental Approvals applicable to such Person and its properties or businesses, as the case may be.

7.04 Financial Statements; Material Adverse Change.

(a) **[Reserved]**.

(b) **[Reserved]**.

7.05 Properties.

(a) **Property Generally**. With respect to all real and personal assets and properties of the Borrower and each of its Subsidiaries (other than Intellectual Property which is covered in **clause (b)** below), the Borrower and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, or sufficient other rights in, all its real and personal property, whether tangible or intangible, material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**.

(i) **Schedule 7.05(b)(i)** contains, with respect to the Borrower and each of its Subsidiaries (set forth on a Subsidiary-by-Subsidiary basis):

(A) (1) a complete and accurate list of all applied for, issued, or registered Patents owned by or licensed to the Borrower or any of its Subsidiaries, including the jurisdiction and patent number, that qualify as Specified Material Intellectual Property, which list shall indicate if such Patent covers the manufacture or its use of one or more of the Borrower's Product offerings, including Halo (CRISPR reagents) or Eclipse (CRISPR-engineered cell lines), and (2) the list of all applied for, issued, or registered Patents licensed to the Borrower or any of its Subsidiaries, including the jurisdiction and patent number, that qualify as Material Intellectual Property, in each case to the knowledge of Borrower;

(B) a complete and accurate list of all unregistered, applied for, or registered Trademarks owned by or licensed to the Borrower or any of its Subsidiaries, including the jurisdiction, trademark application or registration number and the application or registration date, which would qualify as Specified Material Intellectual Property; and

(C) a complete and accurate list of all applied for or registered Copyrights owned by or licensed to the Borrower or any of its Subsidiaries, which would qualify as Specified Material Intellectual Property.

(ii) The Borrower or one of its Subsidiaries, as applicable, is the beneficial owner of all right, title and interest in and to such Person's Specified Material Intellectual Property that it owns (including, without limitation, the Specified Material Intellectual Property listed on **Schedule 7.05(b)(i)** as being owned by the Borrower or one of its Subsidiaries), with no breaks in chain of title and with good and marketable title, free and clear of any Liens or Claims of any kind whatsoever (other than Specified Permitted Liens), and each of the Borrower and its applicable Subsidiaries have the right to use such Specified Material Intellectual Property in the ordinary course of its respective business as currently conducted and as anticipated to be conducted. Without limiting the foregoing, and except as set forth on **Schedule 7.05(b)(ii)**:

(A) other than as permitted by **Section 9.09**, neither the Borrower nor any of its Subsidiaries, has transferred ownership of any of its Specified Material Intellectual Property, in whole or in part, to any Person who is not an Obligor;

(B) with respect to Specified Material Intellectual Property, other than (i) field of use restrictions and other restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements or (ii) as set forth on **Schedule 9.19(a)** or as permitted under **Section 9.09**, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Specified Permitted Liens), Claims or other agreements or arrangements relating to any Specified Material Intellectual Property, including any development, submission, services, research, license or support agreements, which bind, obligate or otherwise restrict the Borrower or any of its Subsidiaries with respect to any Specified Material Intellectual Property;

(C) except as set forth on **Schedule 7.05(b)**, the use by the Borrower or any of its Subsidiaries of any of its respective Specified Material Intellectual Property in connection with the Commercialization and Development of any Product or otherwise in the ordinary course of such Person's businesses does not infringe or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person that could reasonably be expected to materially adversely impact the Borrower's and its Subsidiaries' business;

(D) except as set forth on **Schedule 7.05(b)** and **Schedule 7.06**, (1) there are no pending or, to the Borrower's knowledge, threatened in writing Claims against the Borrower or any of its Subsidiaries asserted by any other Person relating to any Specified Material Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property; and (2) neither the Borrower nor any of its Subsidiaries has received any written notice from, or Claim by, any other Person that the business of the Borrower or any of its Subsidiaries, or the use of any Specified Material Intellectual Property by the Borrower or any of its Subsidiaries in connection with the Commercialization and Development of any Product, infringes upon or constitutes a misappropriation of any Intellectual Property of any such other Person in any material respect, or otherwise offers or constitutes a license of any Specified Material Intellectual Property of the Borrower or any of its Subsidiaries as a result of any such alleged or potential infringement or misappropriation;

(E) the Borrower does not have knowledge that any Material Intellectual Property is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Borrower and, without limiting the foregoing, neither the Borrower nor any of its Subsidiaries has put any other Person on notice of actual or potential infringement, violation or misappropriation of any Material Intellectual Property, and neither the Borrower nor any of its Subsidiaries has initiated the enforcement of any Claim with respect to any Material Intellectual Property;

(F) each relevant current and former employee and contractor of the Borrower and its Subsidiaries who has contributed to the creation or development of any Intellectual Property that qualifies as, or is reasonably expected to become, Material Intellectual Property has executed written confidentiality and invention assignment Contracts with the Borrower or such Subsidiary, as applicable, that irrevocably assigns to the Borrower or such Subsidiary, as applicable, or its designee, all rights of such employees and contractors to such Material Intellectual Property and any Inventions or know-how related thereto, in each case that was conceived or developed by any such employee or contractor in the course of their employment or engagement (as the case may be) by Borrower or any such Subsidiary;

(G) except for un-licensed third party Intellectual Property set forth on Schedule 7.05(b), the Obligor Intellectual Property, together with the Borrower's and its Subsidiaries' lawful use of open source, freeware and third party licensed Intellectual Property, is all of the Intellectual Property reasonably necessary for the operation of the business of the Borrower and its Subsidiaries in connection with the Commercialization and Development of Products as currently conducted or as currently contemplated to be conducted except as could not be reasonably be expected to result in a Material Adverse Effect;

(H) the Borrower and each of its Subsidiaries has made available to the Administrative Agent accurate and complete copies of all Material Agreements relating to all Specified Material Intellectual Property except for (i) any license implied by the sale of a Product and licenses for commonly available off-the-shelf software programs under which an Obligor is the licensee and (ii) licenses granted to Obligor's customers or development partners in the ordinary course of business; and

(I) the Borrower and each of its Subsidiaries have taken reasonable precautions to protect the secrecy, confidentiality and value of its Specified Material Intellectual Property consisting of trade secrets and confidential information.

(iii) With respect to Patents that qualify as Specified Material Intellectual Property, except as set forth on **Schedule 7.05(b)(iii)**, and without limiting the representations and warranties in **Section 7.05(b)(ii)**:

(A) To Borrower's knowledge, each of the issued claims in such Patents is valid and enforceable;

(B) each inventor named in such Patents has executed written Contracts with an Obligor or its predecessor-in-interest that properly and irrevocably assigns to such Obligor or its predecessor-in-interest all of such inventor's rights, title and interest to any of the Inventions claimed in such Patents;

(C) all such Patents are in good standing and none of the Patents, or the Inventions claimed in any such Patent, have been dedicated to the public;

(D) except to the extent the failure to do so would not have a material adverse effect on the conduct of the business of Borrower as presently conducted, all prior art to such Patents was adequately disclosed, to the extent such disclosure is required, to the relevant patent office or, to the Borrower's knowledge, considered by the respective patent offices during prosecution of such Patents;

(E) subsequent to the issuance of such Patents, none of the Borrower, any of its Subsidiaries or any of their respective predecessors-in-interest, has filed any disclaimer or made or permitted any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) (i) to the knowledge of the Borrower, no subject matter designated allowable or allowed by the U.S. Patent and Trademark Office of such Patents is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or

patents of any third party and have not been the subject of any interference, (ii) no such Patents are or have been the subject of any re-examination, opposition or any other post-grant proceedings, and (iii) neither the Borrower nor any of its Subsidiaries has knowledge of any basis for any such interference, re-examination, opposition, *inter partes* review, post grant review, or any other post-grant proceedings;

(G) no such Patents have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable patent office recorded with respect to any such Patents, neither the Borrower nor any of its Subsidiaries has received any written, or to its knowledge, other notice asserting that such Patents are invalid, unpatentable or unenforceable; if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) neither the Borrower nor any of its Subsidiaries has received an opinion, whether preliminary in nature or qualified in any manner, which concludes that a challenge to the validity or enforceability of any such Patents is more likely than not to succeed;

(I) to the Borrower's knowledge, neither the Borrower nor any of its Subsidiaries, nor, to the Borrower's knowledge, any of their respective agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patent and (ii) to the Borrower's knowledge, no prior owner of any Patent of the Borrower or any of its Subsidiaries, nor any of such prior owner's agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any Patent; and

(J) all maintenance fees, annuities, and the like due or payable on or with respect to any such Patents have been timely paid or the failure to so pay could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

7.06 No Actions or Proceedings.

(a) **Litigation**. Except as set forth on **Schedule 7.06(a)**, Borrower has not received notice of any litigation, investigation or proceeding pending and, to the knowledge of the Borrower, no such litigation or proceeding has been threatened in writing, with respect to the Borrower or any of its Subsidiaries by or before any Governmental Authority or arbitrator that (i) could, individually or in the aggregate, reasonably be expected to result in an Event of Default or (ii) involves this Agreement, any other Loan Document, the Transactions or any Material Intellectual Property.

(b) **Environmental Matters**. The operations and property of the Borrower and each of its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to result in Material Adverse Effect.

(c) **Labor Matters**. There are no strikes, lockouts or other material labor disputes against the Borrower or any of its Subsidiaries or, to the Borrower's knowledge, threatened in writing against or affecting the Borrower or any of its Subsidiaries, and no significant unfair labor practice complaint is pending against the Borrower or any Subsidiary or, to the knowledge of the Borrower, threatened against any of them before any Governmental Authority. Except as set forth on **Schedule 7.06(c)**, neither the Borrower nor any of its Subsidiaries is a party to any collective bargaining agreements or similar Contracts, no union representation exists on any facilities of the Borrower or any of its Subsidiaries and the Borrower and its Subsidiaries do not have any knowledge of any union organizing activities that are taking place.

7.07 Compliance with Laws and Agreements.

(a) The Borrower and each of its Subsidiaries is in compliance with all applicable Laws and all Contracts binding upon it or its property, except (other than with respect to Material Intellectual Property) where the failure to do so, could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Event of Default has occurred and is continuing, or will occur as a result of the making of any Loan hereunder.

(b) Without limiting the generality of the foregoing, the Borrower and each of its Subsidiaries is in compliance with all applicable Healthcare Laws and Healthcare Permits in each case, except where the failure to do so could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted, and neither the Borrower nor any such Subsidiary has received written notice by a Governmental Authority of any material violation (or of any investigation, audit, or other proceeding involving allegations of any violation) of any Healthcare Laws, and no such investigation, inspection, audit or other proceeding involving allegations of any such violation has been, to the knowledge of the Borrower or any Subsidiary, threatened in writing.

(c) (i) Each physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to the Borrower or any of its Subsidiaries (collectively, a "***Referral Source***") who has a direct ownership, investment or financial interest in the Borrower or any such Subsidiary paid fair market value for such ownership, investment or financial interest; (ii) any ownership or investment returns distributed to any Referral Source is in proportion to such Referral Source's ownership, investment or financial interest; and (iii) no preferential treatment or more favorable terms were or are offered to such Referral Source compared to investors or owners who are not in a position to refer patients or other businesses. Neither the Borrower nor any of its Subsidiaries, directly or indirectly, has or will guarantee a loan, make a payment toward a loan or otherwise subsidize a loan for any Referral Source including, without limitation, any loans related to financing the Referral Source's ownership, investment or financial interest in the Borrower or any such Subsidiary.

(d) Neither the Borrower nor any of its Subsidiaries is debarred or excluded from participation under any state or federal health care program, including any state or federal workers compensation programs.

(e) Neither the Borrower nor any of its Subsidiaries has received written notice by a Governmental Authority of any material violation (or of any investigation, audit, or other proceeding involving allegations of any violation) of any Healthcare Laws, and except as set forth on **Schedule 7.07(e)**, no such investigation, inspection, audit or other proceeding involving allegations of any such violation has been, to the knowledge of the Borrower, threatened in writing.

7.08 Taxes. Except as set forth on **Schedule 7.08**, the Borrower and each of its Subsidiaries has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except for local taxes not in excess of $100,000 in the aggregate for all local tax jurisdictions at any time or Taxes that are being contested in good faith by appropriate proceedings and for which, in each case, the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Obligors to the Administrative Agent or any Lender in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

7.10 Investment Company Act and Margin Stock Regulation.

(a) **Investment Company Act**. Neither the Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(b) **Margin Stock**. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, Regulation U or Regulation X.

[Reserved].

7.12 Equity Holders, Subsidiaries and Other Investments.

(a) [Reserved].

(b) The Borrower has no Subsidiaries and does not otherwise own or control, directly or indirectly, any Equity Interest in any Person.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of the Borrower and each of its Subsidiaries outstanding as of the date hereof that will remain outstanding immediately after the making of the Loans and the application of proceeds

therefrom on the Closing Date. **Schedule 7.13(b)** is a complete and correct list of all Liens granted by the Borrower and each of its Subsidiaries securing any of the Indebtedness listed on **Schedule 7.13(a)**.

7.14 Material Agreements. Set forth on **Schedule 7.14** is a complete and correct list of (i) each Material Agreement and (ii) each Contract creating or evidencing any Material Indebtedness. Aside from the commencement of the Case and any amounts that may be owed arising prior to the Petition Date, neither the Borrower nor any of its Subsidiaries is in default under any such Material Agreement or Contract creating or evidencing any Material Indebtedness, and the Borrower does not have knowledge of any default by any counterparty to such Material Agreement or Contract creating or evidencing any Material Indebtedness and there are no pending or, to the Borrower's knowledge, threatened in writing Claims against the Borrower or any of its Subsidiaries asserted by any other Person relating to any Material Agreements, including any Claims of breach or default under any such Material Agreements. Aside from the commencement of the Case and any amounts that may be owed arising prior to the Petition Date, neither the Borrower nor any of its Subsidiaries has received any information from, or Claim by, any Person that any Material Agreement is breached or is in default. There are no outstanding (and, the Borrower does not have knowledge of, any threatened in writing) disputes or disagreements with respect to any Material Agreement. Except as otherwise disclosed on **Schedule 7.14**, all Material Agreements including a grant of rights under any Intellectual Property to the Borrower or any of its Subsidiaries are in full force and effect without material modification from the form in which the same were disclosed to the Lenders.

7.15 Restrictive Agreements. Except as set forth on **Schedule 7.15**, neither the Borrower nor any of its Subsidiaries is subject to any Restrictive Agreement, except those permitted under **Section 9.11**.

7.16 Real Property. Except as set forth on **Schedule 7.16**, neither the Borrower nor any of its Subsidiaries owns or leases (as a tenant) any real property.

7.17 Pension Matters. **Schedule 7.17** sets forth a complete and correct list of, and that separately identifies, (i) all Title IV Plans, (ii) all Multiemployer Plans and (iii) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax-exempt status under Section 401 or 501 of the Code or other applicable Law so qualifies. Except for those that could not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Benefit Plan and Foreign Pension Plan is in compliance with all applicable provisions of ERISA, the Code or other applicable Law, (y) there are no existing or pending or, to the knowledge of the Borrower, threatened in writing Claims (other than routine claims for benefits in the normal course of business), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan and (z) no ERISA Event is reasonably expected to occur. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and none of the Borrower, any of its Subsidiaries nor any of their ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent

valuation date. No ERISA Event has occurred or is reasonably expected to occur in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. Neither the Borrower nor any of its ERISA Affiliates has any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Priority of Obligations; Collateral; Security Interest.

(a) **Priority of Obligations**.

(i) Pursuant to Section 364(c)(1) of the Bankruptcy Code, all Obligations shall at all times constitute an allowed Superpriority Claim in the Case with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in Sections 503(b) or 507 of the Bankruptcy Code, but in all cases subject to the Carve-Out; provided, that, pending entry of the Final DIP Order, the Superpriority Claim shall not be payable from the proceeds of Avoidance Actions;

(ii) Pursuant to Section 364(c)(2) of the Bankruptcy Code, all Obligations shall be secured by a perfected first priority lien granted to the Administrative Agent in and on all of the Collateral to the extent that such Collateral is not subject to valid, perfected and non-avoidable liens as of the Petition Date, but in all cases subject to the Carve-Out; provided, that, pending entry of the Final DIP Order, such lien of the Administrative Agent shall not extend to the proceeds of Avoidance Actions;

(iii) Pursuant to Section 364(c)(3) of the Bankruptcy Code, all Obligations shall be secured by a perfected junior priority lien to the Administrative Agent in and on all of the Collateral to the extent that such Collateral is subject to valid liens in existence as of the Petition Date that are perfected subsequent to such date as permitted by Section 546(b) of the Bankruptcy Code (the "***Permitted Pre-Petition Liens***"), but in all cases subject to the Carve-Out;

(iv) Pursuant to Section 364(d) of the Bankruptcy Code, all Obligations shall be secured by a perfected priming security interest and lien granted to the Administrative Agent (the "***Priming Liens***") in and on all of the Collateral, but in all cases subject to the Carve-Out, subordinated only to the Permitted Pre-Petition Liens;

(v) The Priming Liens shall not be subject to being treated *pari passu* with or subordinated to any other liens or security interests other than the Permitted Pre-Petition Liens; provided, that the Priming Liens shall be junior and subordinate to payment of the Carve-Out.

(b) **Collateral; Security Interest**.

(i) The Security Documents create in favor of the Administrative Agent a legal, valid, continuing, and enforceable security interest in the Collateral, the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings are in appropriate form and have been or will be filed in the appropriate offices for filing. Upon such filings and/or the obtaining of "control" (as defined in the Uniform Commercial Code), the Administrative Agent will have a perfected Lien on, and security interest in, to and under all right,

title, and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording, or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the Uniform Commercial Code) or by obtaining control, under the Uniform Commercial Code (in effect on the date this representation is made) in each case prior and superior in right to any other Person, except for Permitted Liens.

(ii) The Liens securing the Obligations are continuing, valid, binding, enforceable, non-avoidable and perfected Liens on all Collateral, and shall constitute, pursuant to Section 364(d)(1) of the Bankruptcy Code, a valid perfected first priority priming lien on all of the existing and after-acquired personal and real property, leasehold interests in real property, and tangible and intangible personal property of the Debtor, including, without limitation, all cash and cash equivalents, all surface land, accounts receivable and other receivables, inventory, equipment, machinery, parts, supplies, rolling stock, fixtures, patents, trade names, trademarks, copyrights, other general intangibles and membership interests, capital stock and Equity Interests owned by the Debtor, in each case, together with the proceeds thereof and all books and records relating thereto; provided, that, pending entry of the Final DIP Order, such Lien shall not include the proceeds of Avoidance Actions.

(iii) The Liens securing the Obligations and such Superpriority Claim (i) subject to entry of the Final DIP Order, shall not be subject to Sections 506, 510, 549, 550, or 551 of the Bankruptcy Code or the "equities of the case" exception of Section 552 of the Bankruptcy Code, (ii) shall not be subordinate to, or *pari passu* with, (w) any Lien, security interest or claim heretofore or hereinafter granted in the Case, (x) any Lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under Section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtor, and (iii) shall be valid and enforceable against any trustee or any other estate representative appointed or elected in the Case, upon the conversion of the Case to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing, and/or upon the dismissal the Case.

(iv) All of the Liens securing the Obligations shall be effective and perfected upon entry of the Interim DIP Order, without the necessity of the execution, recordation of filings by each Debtor of mortgages, intellectual property security agreements, security agreements, control agreements, pledge agreements, financing statements or other similar documents, lien notation on any certificates of title, or the possession or control by the Lender of, or over, any Collateral, as set forth in the Interim DIP Order.

7.19 Governmental Approvals.

(a) The Borrower and each of its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all Governmental Approvals, including all Healthcare Permits, necessary or required for the Borrower and each of its Subsidiaries to engage in the Commercialization and Development of their Products and otherwise conduct their respective operations and businesses in the ordinary course, except where the failure to hold any such approvals, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its

Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted.

(b) Set forth on **Schedule 7.19(b)** is a complete and accurate list of all Governmental Approvals referenced in **Section 7.19(a)** above. All such Governmental Approvals are (i) legally and beneficially owned or held exclusively by the Borrower or one of its Subsidiaries, as the case may be, free and clear of all Liens (other than Specified Permitted Liens), (ii) validly registered and on file with the applicable Governmental Authority, in compliance with all registration, filing and maintenance requirements (including any fee requirements) thereof, and (iii) valid, enforceable, in good standing, and in full force and effect with the applicable Governmental Authority in all respects. All required notices, registrations, listing, supplemental applications or notification reports (including field alerts or other reports of adverse experiences) and other required filings have been filed with the appropriate Governmental Authority, and all such filings are complete and correct and are in compliance with all applicable Laws, except, in either event, where the failure to do so, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted.

7.20 Transactions with Affiliates. Except as set forth on **Schedule 7.20**, neither the Borrower nor any of its Subsidiaries is a party to any transaction or other arrangement (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate that, after giving effect to the Closing Date, would not be permitted pursuant to **Section 9.10** hereof.

7.21 Sanctions. Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees nor, to the knowledge of the Borrower, any agents or other Persons acting on behalf of any of the foregoing (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction in violation of Sanctions or (iv) is or has ever been (within the previous five (5) years) in violation of or subject to an investigation relating to Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or indirectly, to lend, contribute or provide to, or has been or will be otherwise made available to fund, any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction in violation of Sanctions or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Administrative Agent, the Lenders and their Affiliates) of Sanctions.

7.22 Anti-Corruption. Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers or employees nor, to the knowledge of the Borrower, any agents or other Persons acting on behalf of any of the foregoing, directly or indirectly, has (i) violated or is in violation of any applicable anti-corruption Law, (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or indirectly, any Prohibited Payment or (iii) been subject to any investigation by any Governmental Authority with regard to any actual or alleged Prohibited Payment.

7.23 Deposit and Disbursement Accounts. **Schedule 7.23** contains a list of all banks and other financial institutions at which the Borrower or any of its Subsidiaries maintains deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts, and such Schedule correctly identifies the name and address of each bank or financial institution, the name in which the account is held, the type of account, and the complete account number therefor.

7.24 Royalties and Other Payments. Except as set forth on **Schedule 7.24**, neither the Borrower nor any of its Subsidiaries is obligated, pursuant to any Contract or otherwise, to pay any royalty, milestone payment, deferred payment or any other contingent payment in respect of any Product.

7.25 Non-Competes. Neither the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any of their respective directors, officers or employees is subject to an enforceable non-competition agreement that materially prohibits or will materially interfere with the Commercialization and Development of any of Product.

7.26 [Reserved]. **Initial Budget** The Debtor has prepared and delivered to the Lender an initial budget that is in form and substance satisfactory to the Administrative Agent, which reflects the Debtor's forecasted receipts and disbursements for the 13-weeks commencing on the Closing Date (such budget, the "***Initial Budget***").Each DIP Order, once entered, is in full force and effect and has not been reversed, modified, amended, stayed or vacated absent the written consent of the Administrative Agent.

(b) Upon the occurrence of the Maturity Date (whether by acceleration or otherwise), the Lenders shall, subject to the applicable provisions of the Interim DIP Order or the Final DIP Order, as applicable, by entitled to immediate payment of the Obligations, and to the enforcement of the remedies provided for under the Loan Documents in accordance with the terms thereof and such applicable DIP Order without further application to or by the Bankruptcy Court.

(c) In each case, after entry of the Interim DIP Order (and entry of the Final DIP Order when applicable), and pursuant to and to the extent provided in the applicable DIP Order, the Obligations will be secured by a valid and perfected lien on the Collateral having the priorities set forth herein.

(d) The Debtor is in compliance (i) in all material respects with all orders (other than the DIP Orders) entered by the Bankruptcy Court and (ii) with the DIP Orders, in each case, from the Petition Date.

SECTION 8
AFFIRMATIVE COVENANTS

The Obligors jointly and severally covenant and agree with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower shall furnish to the Administrative Agent (with sufficient copies for each Lender):

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) Copies of all letters of representation signed by an Obligor to its auditors and, promptly upon receipt thereof, copies of all auditor reports delivered for each fiscal quarter.

(g) Promptly after the same are released, copies of all press releases; provided that documents required to be furnished pursuant to this **Section 8.01(g)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" or on the Borrower's website.

(h) Promptly, and in any event within five (5) Business Days after receipt, by an Obligor thereof, copies of each material notice or other material correspondence received from any securities regulator or exchange to the authority of which the Borrower or any Obligor may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Borrower or any Obligor.

(i) Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower or any of its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which the Borrower or such Subsidiary, as applicable, may become subject from time to time.

(j) Promptly following any Lender's request, the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**.

(k) Within five (5) Business Days of delivery, copies of all statements, reports and notices (including board kits) made available to the Borrower's Board or holders of the Borrower's Equity Interests; provided that (i) any such material may be redacted by the Borrower to exclude information relating to the Loans or Loan Documents which would result in a conflict of interest with the Lenders with respect thereto (including with respect to repayment of the Loans) or (ii) in the good faith determination of the Borrower after consultation with legal counsel, if the delivery of such materials could be reasonably likely to result in the loss of attorney-client privilege.

(l) Within five (5) Business Days after issuance (or receipt by the Borrower or any of its Subsidiaries) thereof, (i) copies of any notice of default or event of default issued by any Person under or in respect of the Pre-Petition Credit Agreement, (ii) copies of all waivers, consents, forbearances, amendments and other modifications to or accommodations with respect to the Pre-

Petition Credit Agreement, and (iii) copies of all other notices, financial statements, reports, certificates and other documents delivered or required to be delivered under the Pre-Petition Credit Agreement.

(m) Such other information respecting the operations, properties, business, liabilities or condition (financial or otherwise) of the Obligors (including with respect to the Collateral) as the Administrative Agent may from time to time reasonably request.

(n) (i) As soon as reasonably practicable in advance of filing with the Bankruptcy Court, the Final DIP Order and all other proposed orders and pleadings related to the Loans and the Loan Documents, any Chapter 11 Plan and/or any disclosure statement related thereto and (ii) by the earlier of one Business Day prior to being filed (and if impracticable, then as soon as possible and in no event later than promptly after being filed) on behalf of the Debtor with the Bankruptcy Court or at the same time as such documents are provided by the Debtor to any statutory committee appointed in the Case or to the Chapter 11 trustee, all other notices, filings, motions, pleadings or other information concerning the financial condition of the Debtor or other Indebtedness of the Debtor or any request for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Court or Section 9019 of the Federal Rules of Bankruptcy Procedure.

(o) By no later than 5:00 p.m. (New York time) on the third Business Day of each week commencing with the first full week after the Petition Date (each such date, a "***Reporting Date***"), an updated budget, containing line items of sufficient detail to reflect the Debtor's projected cash receipts, if any, and disbursements for such 13-week period on a weekly basis, which such budget upon the approval of the Administrative Agent shall become the Approved Budget (the "***Updated Budget***"); provided, that, in the event the Administrative Agent and the Debtor do not agree on an Updated Budget, the Approved Budget shall be the then-existing Approved Budget or such Approved Budget as may be approved by the Bankruptcy Court after notice and a hearing.

(p) On each Reporting Date, (i) a report, in form and detail satisfactory to the Administrative Agent (each, a "***Variance Report***"), setting forth the Variance Period immediately preceding the date of each such delivery comparing actual cumulative reports and disbursements, respectively, for such period as set forth in the Approved Budget and shall indicate whether there are any adverse variances that exceed the allowed variances, and (ii) a certificate of a Responsible Officer of the Borrower attesting to the truth and accuracy of such Variance Report.

(q) On each Reporting Date, weekly reports listing all cash receipts and cash disbursements made during the prior week.

(r) On each Reporting Date, a report setting forth the identity of all consultants hired by the Debtor, together with their title and amount owed per pay period.

(s) On each Reporting Date, accounts payable listings as of such Reporting Date.

The Borrower hereby acknowledges that the Administrative Agent or the Lenders may not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and the Administrative Agent, the Lenders or their respective personnel may be engaged in investment and other market-related activities with respect to such Persons' securities. Notwithstanding anything to the contrary in this Agreement,

in the event that, as a result of a Public Offering, the Borrower becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act, the Borrower covenants and agrees that, except for the information required pursuant to **clauses (b)**,**(c)**, **(d)**, and **(l)** through **(s)** above, neither it, nor any Person acting on its behalf, will provide, or become obligated to provide, the Administrative Agent or any Lender or their respective representatives or agents with any other information that the Borrower reasonably believes constitutes material non-public information, unless prior thereto, such receiving Person shall have confirmed to the Borrower in writing that it consents to receive such information. The Borrower hereby acknowledges that each Lender is relying on the foregoing covenant in effecting transactions in securities of the Borrower.

8.02 Notices of Material Events. On or within five (5) Business Days (or such longer or shorter period as may be expressly set forth below) after a Responsible Officer of the Borrower first learns of or acquires knowledge with respect to any of the below events or circumstances, the Borrower shall furnish to the Administrative Agent written notice thereof (prepared in reasonable detail):

(a) The occurrence of any Default, including in respect of any Material Adverse Change or Material Regulatory Event.

(b) The occurrence of any event with respect to any property or assets of the Borrower or any of its Subsidiaries resulting in a Loss aggregating $100,000 (or the Equivalent Amount in other currencies) or more.

(c) Any Claim, action, suit, notice of violation, hearing, investigation or other proceedings pending, or to the best of the Borrower's knowledge, threatened in writing against or affecting the Borrower or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, whether made by a Governmental Authority or other Person that, if adversely determined could reasonably be expected to result in a Loss of $100,000 or more.

(d) (i) On or prior to the date of any filing by Borrower or any of its ERISA Affiliates of any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) promptly, and in any event within ten (10) days, after any Responsible Officer of Borrower or any of its ERISA Affiliates knows or has reason to know (A) that an ERISA Event has occurred or is reasonably expected to occur or (B) that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect to either of the foregoing, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto.

(e) Within thirty (30) days of the date thereof, (i) the termination of any Material Agreement other than upon expiration thereof in accordance with its terms, and (ii) the receipt by the Borrower or any of its Subsidiaries of any notice of a material breach under or in respect of any Material Agreement.

(f) The reports and notices as required by the Security Documents.

(g) Within thirty (30) days of the date thereof, notice of any material change in accounting policies or financial reporting practices by the Obligors.

(h) Notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving the Borrower or any of its Subsidiaries.

(i) Any licensing agreement or similar arrangement that, individually, exceeds $100,000 entered into by the Borrower or any of its Subsidiaries in connection with any infringement or alleged infringement of any Intellectual Property of another Person.

(j) Within thirty (30) days of the date thereof, notice of the creation, development or other acquisition of any Intellectual Property by the Borrower or any of its Subsidiaries after the date hereof and during such prior fiscal quarter for which such financial statements were delivered, which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority.

(k) Any change to the Borrower's or any of its Subsidiaries' ownership of Deposit Accounts, Securities Accounts and Commodity Accounts, by delivering to the Administrative Agent, a notice setting forth a complete and correct list of all such accounts as of the date of such change.

(l) Promptly after a Responsible Officer of any Obligor first learns of the occurrence of or existence thereof, any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect or a Material Regulatory Event.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

The Borrower hereby acknowledges that the Administrative Agent or the Lenders may not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and the Administrative Agent, the Lenders or their respective personnel may be engaged in investment and other market-related activities with respect to such Persons' securities. Notwithstanding anything to the contrary in this Agreement, in the event that, as a result of a Public Offering, the Borrower becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act, the Borrower covenants and agrees that, except for any notice required pursuant to **clause (a)** above, neither it, nor any Person acting on its behalf, will provide, or become obligated to provide, the Administrative Agent or any Lender or their respective representatives or agents with any information that the Borrower reasonably believes constitutes material non-public information, unless prior thereto, such receiving Person shall have confirmed to the Borrower in writing that it consents to receive such information. The Borrower hereby acknowledges that each Lender is relying on the foregoing covenant in effecting transactions in securities of the Borrower.

8.03 Existence; Conduct of Business. The Borrower shall, and shall cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full

force and effect its legal existence and all Governmental Approvals for the conduct of its business, in each case, except where the failure to do so could not reasonably be expected to materially and adversely impact the Borrower's and its Subsidiaries' business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Subject to the requirements of the Bankruptcy Code, the Borrower shall, and shall cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful Claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries, except (x) for local taxes not to exceed of $100,000 in the aggregate for all local tax jurisdictions at any time and (y) to the extent such Taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP, and (ii) all other lawful Claims which, if unpaid, would by Law become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries.

8.05 Insurance. The Borrower shall, and shall cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the request of the Administrative Agent, the Borrower shall furnish to the Administrative Agent from time to time: (i) full information as to the insurance carried by the Borrower and each of its Subsidiaries and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. The Borrower shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed in a manner adverse to the insured Person without at least twenty (20) days' prior written notice (ten (10) days' prior written notice for non-payment of premium) to the Borrower and the Administrative Agent. Receipt of notice of cancellation or modification of any such insurance policies or reduction of coverage or amounts thereunder shall entitle any Secured Party to renew any such policies, cause the coverage and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Borrower (payable on demand). The amount of any such expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

8.06 Books and Records; Inspection Rights. The Borrower shall, and shall cause each of its Subsidiaries to, keep proper books of record and account in which full, true and materially correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower shall, and shall cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and

reasonably inspect its properties, to reasonably examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and, if necessary after such discussions with such Obligor's officers, its independent accountants, all at such reasonable times as the Administrative Agent or the Lenders may reasonably request. The Borrower shall pay all reasonable costs and expenses of all such inspections.

8.07 Compliance with Laws and Other Obligations. The Borrower shall, and shall cause each of its Subsidiaries to, (i) comply with all applicable Laws and Governmental Approvals (including Environmental Laws and all Healthcare Laws), (ii) subject to the requirements of the Bankruptcy Code, use commercially reasonable, best efforts to remain in compliance with, and perform all obligations under or in connection with, all Material Agreements, and (iii) obtain and maintain all Governmental Approvals (including all Healthcare Permits) necessary in connection with the operation of its business and ownership of its properties (including its Commercialization and Development Activities with respect to any Product), except, in the case of clauses (i), (ii) and (iii) above, where the failure to do so, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted, and (iv) only engage in the Commercialization and Development of Products within the scope of its Regulatory Approvals (including all Healthcare Permits) such that the protections of the Public Readiness and Emergency Preparedness Act, codified by 42 USC §§ 247-6d, 247-6e, apply.

8.08 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, whether tangible or intangible, necessary or useful in the proper conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

8.09 Government Approvals, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals (including all Healthcare Permits) necessary in connection with (i) the execution, delivery and performance of the Loan Documents, (ii) the consummation of the Transactions and (iii) the operation and conduct of their respective businesses and the ownership of their respective properties, except, in the case of **clause (iii)** above, where the failure to do so could not reasonably be expected to have a material and adverse impact on the Borrower's and its Subsidiaries' business.

8.10 Action under Environmental Laws. The Borrower shall, and shall cause each of its Subsidiaries to, upon becoming aware of the release of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, to restore their respective businesses, operations and properties to a condition in compliance with applicable Environmental Laws.

8.11 Use of Proceeds. The proceeds of the Loans shall be used only as provided in **Section 2.05**. Without limiting the foregoing, no part of the proceeds of the Loans shall be used,

whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulation T, Regulation U and Regulation X.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **[Reserved]**.

(b) **Further Assurances**.

(i) The Borrower shall take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement and the applicable Security Documents.

(ii) In the event that any Obligor acquires Obligor Intellectual Property during the term of this Agreement, then, upon the request of the Administrative Agent in its sole, reasonable discretion, the provisions of this Agreement and the Security Documents shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any Person, in each case from and after the date of such acquisition; and

(iii) Without limiting the generality of the foregoing, within thirty (30) days following written request from the Administrative Agent, the Borrower shall take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments, and delivering shares of stock together with undated transfer powers executed in blank) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the property of the Borrower as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to Permitted Liens and the relevant requirements of the applicable Security Documents.

(c) **Costs and Benefits**. Notwithstanding any term or provision of this **Section 8.12** to the contrary, without limiting the right of the Administrative Agent or the Lenders to require a Lien or security interest on any newly acquired assets or properties of the Borrower or any of its Subsidiaries, so long as no Event of Default has occurred and is continuing, the Borrower may make a written request to the Administrative Agent that the Lenders waive the requirements of this **Section 8.12** to provide a Lien, security interest or guaranty from, any newly acquired assets or properties, as the case may be, due to the cost or burden thereof to the Borrower and its Subsidiaries (when taken as a whole) being unreasonably excessive relative to the benefit that would inure to the Secured Parties, and describing such cost or burden in reasonable detail (and the Administrative Agent will deliver copies of any such request to the Lenders). Upon receipt of any such written notice, the Lenders shall review and consider such request in good faith and, within five (5) Business Days of receipt of such request, shall determine in their sole, but commercially reasonable, discretion whether to grant such request for a waiver, and the Administrative Agent will notify the Borrower of such determination; provided that the failure by the Administrative Agent to timely notify the Borrower of the Lenders' determination shall be deemed to be a rejection of the Borrower's request.

8.13 Termination of Non-Permitted Liens. In the event that the Borrower or any of its Subsidiaries shall obtain knowledge of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of the Borrower or any of its Subsidiaries, which Lien is not a Permitted Lien, the Borrower shall use its best efforts to promptly terminate or cause the termination of such Lien.

8.14 Intellectual Property. In the event that the Borrower or any of its Subsidiaries creates, develops or acquires Obligor Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such creation, development, or acquisition (except that any representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

8.15 Maintenance of Governmental Approvals, Contracts, Intellectual Property, Etc. The Borrower shall, and shall cause each of its Subsidiaries (to the extent applicable) to, (i) maintain in full force and effect all Governmental Approvals, Healthcare Permits, Material Intellectual Property and other rights, interest or assets (whether tangible or intangible) reasonably necessary for the Commercialization and Development of Products and the operations of such Person's business, in each case, except where the failure to do so could not reasonably be expected to materially and adversely impact the Borrower's and its Subsidiaries' business, (ii) promptly upon obtaining knowledge thereof, notify the Administrative Agent of any infringement or other violation by any Person of the Borrower's or any such Subsidiaries' Material Intellectual Property, and aggressively pursue any such infringement or other violation, except in any specific circumstance where the Borrower determines in good faith that it is not commercially reasonable to do so, (iii) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all new Material Intellectual Property created, developed, or acquired by the Borrower or any of its Subsidiaries, as the case may be, that are necessary for the operations of the business of such Person, and (iv) promptly after obtaining knowledge thereof, notify the Administrative Agent of any written Claim by any Person that the conduct of the business of the Borrower or any of its Subsidiaries (including any Commercialization or Development of any Product) has infringed upon any Intellectual Property of such Person that could materially and adversely impact the Borrower's business (including any Commercialization or Development of any Product).

8.16 ERISA and Foreign Pension Plan Compliance. The Borrower shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA or applicable Law with respect to any Plans or Foreign Pension Plans to which the Borrower or any such Subsidiary is a party as an employer.

8.17 Cash Management. The Borrower shall, and shall cause each of its Subsidiaries to:

(a) Other than with respect to any Excluded Accounts, maintain at all times all deposit accounts, disbursement accounts, investment accounts (and other similar accounts) and lockboxes located in the U.S. and held by any Obligor with a bank or financial institution, except as permitted

pursuant to **clause (c)** below, that has executed and delivered to the Administrative Agent an account control agreement, in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a "***Controlled Account***"); each such Controlled Account shall be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and each Obligor shall have granted a Lien to the Administrative Agent, for the benefit of the Secured Parties, over such Controlled Accounts;

(b) deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts receivable, Contracts or any other rights and interests (including pursuant to **clause (c)** below) into Controlled Accounts; and

(c) at any time after the occurrence and during the continuance of an Event of Default, at the request of the Administrative Agent, the Borrower shall cause all payments constituting proceeds of accounts receivable to be directed into lockbox accounts pursuant to agreements in form and substance reasonably satisfactory to the Administrative Agent.

8.18 Litigation Cooperation. The Borrower shall, and shall cause each of its Subsidiaries to make reasonably available to the Administrative Agent, its (and its Subsidiaries') officers, employees, agents, without expense to the Administrative Agent, books and records, to the extent that the Administrative Agent may deem them reasonably necessary to prosecute or defend against any third-party suit or proceeding instituted by or against the Administrative Agent or any Secured Party with respect to any Collateral, the subject of any Loan Document or relating to the Borrower or any of its Subsidiaries.

8.19 Conference Calls. At the request of the Administrative Agent, the Borrower shall cause its chief financial officer to participate in conference calls with the Administrative Agent and the Lenders to discuss, among other things, the financial condition of each Obligor and any financial or earnings reports; provided that such conference calls shall be held at reasonable times during normal business hours.

8.20 Information Rights. The Borrower shall make reasonably available to the Administrative Agent, without expense to the Administrative Agent, and subject to applicable legal privileges, material information regarding any advisors that the Borrower retains, including, without limitation, at the Administrative Agent's request, arranging for periodic and direct calls between the Administrative Agent and any of the Borrower's advisors.

8.21 First and Second Day Orders. The Borrower shall cause all proposed "first day" orders and "second day" orders submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement and reasonably acceptable to the Administrative Agent.

8.22 Certain Case Milestones. The Borrower shall cause the events listed on **Schedule 8.22** attached hereto (each a "***Milestone***", and collectively, "***Milestones***") to be satisfied in the applicable timeframes set forth on such schedule (as may be extended in writing by the Administrative Agent in its sole discretion).

8.23 Budget. The Obligors shall comply in all respects with the Approved Budget, subject to Permitted Variances.

SECTION 9
NEGATIVE COVENANTS

The Obligors jointly and severally covenant and agree with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been indefeasibly paid in full in cash:

9.01 Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) (x) the Obligations and (y) Indebtedness under the Pre-Petition Credit Agreement;

(b) Indebtedness existing on the Closing Date and set forth on **Schedule 7.13(a)**; provided that such Indebtedness is subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(c) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of the Borrower's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the ordinary course of business;

(e) [reserved];

(f) [reserved];

(g) ordinary course of business equipment financing and leasing and Capital Lease Obligations; provided that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness (inclusive of all Capital Lease Obligations) does not exceed $100,000 (or the Equivalent Amount in other currencies) in the aggregate at any time;

(h) Indebtedness under Hedging Agreements permitted by **Section 9.05(e)**;

(i) [reserved];

(j) Indebtedness consisting of the financing of insurance premiums in respect of insurance policies insuring assets or businesses of an Obligor written or arranged in such Obligor's ordinary course of business and which are payable within one year, in each case in an amount not

to exceed the amount of the applicable insurance premium in respect of any such policy plus interest and financing charges applicable thereto;

(k) Indebtedness incurred in connection with cash management services, including treasury, depository, overdraft, credit or debit card, purchasing cards, electronic funds transfer, automatic clearing house arrangements, cash pooling arrangements, netting services, merchant services and other similar arrangements of an Obligor, in each case incurred in the ordinary course of business;

(l) Indebtedness incurred under performance, surety, bid, statutory and appeal bonds, completion guarantees and other similar obligations, in each case in the ordinary course of business;

(m) Indebtedness in respect of worker's compensation, health, disability or other types of social security benefits, unemployment or other insurance obligations and reclamation and statutory obligations, in each case incurred in the ordinary course of business;

(n) Indebtedness in respect of letters of credit, bank guarantees or similar instruments for the account of the Borrower or any Subsidiary incurred in the ordinary course of business; provided that the aggregate face amount of all such letters of credit, bank guarantees or other instruments (including letters of credit outstanding on the Closing Date) shall not exceed $200,000 at any time outstanding;

(o) Indebtedness consisting of Investments permitted pursuant to **Section 9.05**;

(p) [reserved]; and

(q) [reserved].

9.02 Liens. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now or in the future owned by it or such Subsidiary, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens securing the Obligations and Permitted Pre-Petition Liens;

(b) any Lien on any property or asset of the Borrower or any of its Subsidiaries existing on the Closing Date and set forth on **Schedule 7.13(b)**; provided that (i) no such Lien shall extend to any other property or asset of the Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the Closing Date;

(c) Liens securing Indebtedness permitted under **Section 9.01(g)**; provided that such Liens are restricted solely to the collateral permitted to be secured by **Section 9.01(g)**;

(d) Liens imposed by any applicable Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' liens, materialmen and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof

in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

(e) pledges or deposits made in the ordinary course of business in connection with (i) real property leases entered into in the ordinary course of business, (ii) obligations in respect of workers' compensation, unemployment insurance or other similar social security legislation, to the extent permitted pursuant to **Section 9.01(m)**, or (iii) obligations in respect of surety or appeal bonds, bid or performance bonds, or other obligations of a like nature, to the extent permitted pursuant to **Section 9.01(l)**;

(f) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(g) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any applicable Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or any of their Subsidiaries;

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to applicable Law; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any applicable Law, which, in the aggregate for **clauses (i)**, **(ii)** and **(iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or its Subsidiaries;

(i) bankers' liens, rights of setoff and similar Liens incurred on deposits made to a bank on deposit accounts to the extent permitted to be made hereunder in the ordinary course of business;

(j) any judgment Lien not constituting an Event of Default;

(k) interests of lessors and sublessors under operating leases, interests of licensors or sublicensors under licenses agreements, and with respect to any realty occupied by any Obligor or any of its Subsidiaries, all easements, rights of way, reservations, licenses, encroachments, variations and similar restrictions, charges and encumbrances on title that, in any such case or event, do not secure monetary obligations and do not materially impair the use of such property for its intended purposes;

(l) Liens on cash held on deposit to secure letters of credit, bank guarantees or similar instruments permitted under **Section 9.01(n)** in an amount not to exceed the face amount of such

letters of credit, bank guarantees or similar instruments, so long as such cash is held in segregated accounts maintained with the issuers of such letters of credit, bank guarantees or similar instruments;

(m) [reserved]; and

(n) Liens securing Indebtedness permitted by **Section 9.01(j)**; provided that such Lien shall be solely limited to the applicable insurance policies, supporting documentation relating thereto and the Obligor's right to receive proceeds under such insurance policy with respect to which such Indebtedness has been incurred.

Any term or provision of this **Section 9.02** to the contrary notwithstanding, no Lien otherwise permitted under any of the foregoing **clauses (b)** through **(h)** and **clauses (j)** through **(n)** shall apply to any Material Intellectual Property.

9.03 Fundamental Changes, Acquisitions, Etc. The Borrower shall not, and shall not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any Disqualified Equity Interests, (iv) effect any Public Offering or (v) make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except as permitted pursuant to an order of the Bankruptcy Court.

9.04 Lines of Business. The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the Closing Date by such Persons or a business reasonably related or ancillary thereto or a reasonable extension thereof.

9.05 Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the Closing Date and identified on **Schedule 9.05**;

(b) [reserved];

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) Investments consisting of security deposits with utilities and landlords to secure office space and other like Persons made in the ordinary course of business;

(i) [reserved];

(j) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(k) [reserved];

(l) advances and extensions of credit (including to trade creditors) in the nature of trade payables made in connection with the purchases of goods or services in the ordinary course of business;

(m) [reserved];

(n) [reserved]; and

(o) [reserved].

9.06 Restricted Payments. The Borrower shall not, and shall not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment.

9.07 Payments of Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, and (ii) any other payments permitted pursuant to the DIP Orders and the Approved Budget.

9.08 Change in Fiscal Year. The Borrower shall not, and shall not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the Closing Date.

9.09 Sales of Assets, Etc. Except as set forth below, the Borrower shall not, and shall not permit any of its Subsidiaries to (i) sell, lease, transfer, or otherwise dispose of any of its assets or property (including accounts receivable, Intellectual Property or Equity Interests of Subsidiaries), (ii) grant or enter into any outbound licenses of Material Intellectual Property (or enter into any Contracts or agreements related thereto), or (iii) forgive, release or compromise any amount owed to the Borrower or such Subsidiary, in each case, in one transaction or series of transactions (any thereof, an "**Asset Sale**"):

(a) sales of inventory in the ordinary course of its business on ordinary business terms;

(b) the forgiveness, release or compromise of any amount owed to any Obligor or Subsidiary in the ordinary course of business;

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved]**;**

(g) the sale, assignment, transfer, disposition or discount, in each case, without recourse, of accounts receivable arising in the ordinary course of business that have been written down by the Borrower acting in good faith and consistent with its historical collection practices;

(h) any dispositions as a result of any involuntary loss, damage or destruction of property as a result of a Casualty Event or transfers of property to insurance companies in exchange for casualty insurance proceeds;

(i) [reserved];

(j) the lapse of issued Patents, issued Trademarks and issued Copyrights of Borrower and its Subsidiaries to the extent such issued Patents, issued Trademarks and issued Copyrights do not qualify as Material Intellectual Property and are not in the good faith judgment of the Borrower useful to, or required in, the conduct of the business of the Obligors or any of their Subsidiaries;

(k) the abandonment or other disposition of a lease or sublease of real property that is, in the commercially reasonable judgment of the Borrower, not used or useful in the conduct of the business of the Obligors or any of their Subsidiaries;

(l) [reserved]; and

(m) [reserved].

9.10 Transactions with Affiliates. The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions or arrangements with, any of its Affiliates, except:

(a) [reserved];

(b) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of the Borrower or any of its Subsidiaries in the ordinary course of business;

(c) [reserved]; and

(d) any other transaction of any Obligor or any of its Subsidiaries (including the issuance and sale of Qualified Equity Interests) that is (i) otherwise permitted by this Agreement, (ii) entered into in the ordinary course of business, (iii) on fair and reasonable terms that are no less favorable (including with respect to the amount of cash or other consideration receivable or payable in connection therewith) to such Obligor or such Subsidiary, as applicable, than it could obtain in an arm's-length transaction with a Person that is not an Affiliate of such Obligor or such Subsidiary and (iv) of the kind which would be entered into by a prudent Person in the position of such Obligor or such Subsidiary, as applicable, with another Person that is not an Affiliate of such Obligor or such Subsidiary, as applicable.

9.11 Restrictive Agreements. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement

other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) customary restrictions and conditions contained in agreements relating to an Asset Sale permitted pursuant to **Section 9.09**; provided that such restrictions and conditions apply only to the Subsidiary or property or asset that is to be sold and were not created or imposed in contemplation of this Agreement, (iii) restrictions and conditions imposed by any agreement relating to Permitted Indebtedness that is secured by a Permitted Lien so long as such restrictions or conditions apply only to the property or assets securing such Permitted Indebtedness and were not created or imposed in contemplation of this Agreement, (iv) [reserved], (v) customary provisions in leases and subleases entered into in compliance with **Section 9.13** restricting the assignment thereof or restricting the grant of Liens in such lease or sublease, (vi) restrictions on pledges or deposits made in the ordinary course of business in connection with leases or obligations permitted pursuant to **Section 9.02(e)**, and (vii) Restrictive Agreements set forth on **Schedule 7.15**; provided further that, any term or provision of the foregoing notwithstanding, no such Restrictive Agreement otherwise permitted under this Section shall be permitted in the event it in any way restricts, prohibits or otherwise prevents (x) the execution, delivery and performance of the Obligations or any Secured Party's rights or remedies in respect thereof, (y) the exercise of remedies by the Administrative Agent against the Borrower or any Subsidiary following an Event of Default as contemplated by the Loan Documents or (z) the performance of the obligations of the Borrower pursuant to **Section 8.12** hereof.

9.12 Modifications of Organic Documents. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document that could reasonably be expected to adversely affect any Obligations or any interests, rights or remedies of any Secured Party in respect of the Loan Documents; or

(b) (i) take or omit to take any action that results in the termination of, or permits any other Person to terminate, any Material Agreement or Material Intellectual Property; or (ii) take any action that permits any Material Agreement or Material Intellectual Property to be terminated by any counterparty thereto prior to its stated date of expiration.

9.13 Sales and Leasebacks. Except as disclosed on **Schedule 9.13**, the Borrower shall not, and shall not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to sell or transfer to any other Person and (ii) which such Person intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.14 Hazardous Material. The Borrower shall not, and shall not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

9.15 Accounting Changes. The Borrower shall not, and shall not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP.

9.16 Compliance with ERISA. Neither Borrower nor any of its ERISA Affiliates shall cause or suffer to exist (i) any event that could reasonably be expected to result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that, in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries shall cause or suffer to exist any event that could reasonably be expected in the imposition of a Lien with respect to any Benefit Plan.

9.17 Inconsistent Agreements. The Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into any Contract containing any provision that would (i) cause a Default hereunder or be violated or breached by such Person hereunder or by the performance by such Person of any of its obligations hereunder or under any other Loan Document, (ii) prohibit any such Person from granting to the Administrative Agent and the Lenders a Lien on any of its assets pursuant hereto or any other Loan Document or (iii) create or permit to exist or become effective any Lien or restriction on the ability of any such Person to (x) make Restricted Payments, pay dividends or make other distributions to the Borrower or any of its Subsidiaries, or pay any Indebtedness owed to the Borrower, (y) make loans or advances to the Borrower or any of its Subsidiaries or Guarantee Indebtedness of the Borrower or any of its Subsidiaries, or (z) transfer any of its assets or properties to the Borrower.

9.18 Sanctions; Anti-Corruption Use of Proceeds. The Borrower shall not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (B) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as Administrative Agent, Lender, underwriter, advisor, investor, or otherwise).

9.19 Inbound and Outbound Licenses.

(a) **Inbound Licenses.** Except for inbound licenses, collaboration arrangements and related agreements disclosed on **Schedule 9.19(a)** and **Schedule 7.05(b)(ii)(D)**, the Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or become or remain bound by any inbound license agreement (or similar arrangement).

(b) **Outbound Licenses.** Except for outbound licenses and related agreements disclosed on **Schedule 9.19(b)**, the Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or become or remain bound by any outbound license of Material Intellectual Property that is necessary or required in the ordinary course of business for the Commercialization and Development of the Products of the Borrower or any of its Subsidiaries.

9.20 Carve-Out.

(a) The Borrower shall not, and shall not permit any of its Subsidiaries to, use any portion of the Carve-Out or any portion of the Collateral or the proceeds thereof for the payment of the fees and expenses of any Person incurred in challenging, or in relation to any investigation

(except as set forth in the DIP Orders), litigation, objection or challenge of (i) the Liens or claims of the Administrative Agent or any Lender, (ii) any claim or cause of action against the Administrative Agent, any Lender or of their respective Affiliates, including any claim under Chapter 5 of the Bankruptcy Code, and (iii) any claims or challenges relating to the allocation of value as between encumbered and unencumbered assets (if any).

(b) The Borrower shall not, and shall not permit any of its Subsidiaries to, use any portion of the Carve-Out, any portion of the Loans or any portion of the Collateral or any proceeds thereof in connection with preventing, hindering or delaying the Administrative Agent's or any Lender's enforcement or realization upon the Collateral once an Event of Default has occurred and is continuing.

9.21 No Subsidiaries. The Borrower shall not have, form, create, organize, incorporate or acquire any Subsidiaries, conduct any business or hold any assets through any Subsidiary or otherwise own or control, directly or indirectly, any Equity Interest in any Person.

SECTION 10
FINANCIAL COVENANTS

10.01 [Reserved].

10.02 [Reserved].

SECTION 11
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an "***Event of Default***":

(a) **Principal or Interest Payment Default**. The Borrower shall fail to pay any principal of or interest on the Loans, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.

(b) **Other Payment Defaults**. Any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) **Representations and Warranties**. Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier, or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants**. Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Sections 8.01, 8.02**, **8.03** (with respect to the Borrower's existence) **8.11**, **8.12**, **8.21**, **8.22**, **8.23**, **Section 9**, or **Section 10**.

(e) **Other Covenants**. Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)**, **11.01(b)** or **11.01(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

(f) **Payment Default on Other Indebtedness**. Any Obligor or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness; provided that this **Section 11.01(f)** shall not apply to Indebtedness to the extent the holders of such Indebtedness are not exercising, and are not permitted by operation of Law to exercise, remedies with respect to such Indebtedness or the collateral pledged in support thereof.

(g) **Other Defaults on Other Indebtedness**. (i) Any material breach of, or "event of default" or similar event under, any Contract governing any Material Indebtedness shall occur, or (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this **Section 11.01(g)** shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness or (y) Indebtedness to the extent the holders of such Indebtedness are not exercising, and are not permitted by operation of Law to exercise, remedies with respect to such Indebtedness or the collateral pledged in support thereof.

(h) **Judgments**. One or more judgments for the payment of money in an aggregate amount in excess of $100,000 (or the Equivalent Amount in other currencies) shall be rendered against the Borrower or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of thirty (30) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment.

(i) **ERISA and Pension Plans**. An ERISA Event shall have occurred that, in the opinion of the Administrative Agent, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $100,000 since the Closing Date.

(j) **Change of Control**. A Change of Control shall have occurred.

(k) **Material Adverse Change, Etc**. A Material Adverse Change, Material Adverse Effect or Material Regulatory Event shall have occurred.

(l) **Impairment of Security, Etc.** If any of the following events occurs, and with respect to the following **clause (i)**, other than as a result of the acts or omissions of the Administrative Agent or any Lender: (i) any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) to the extent perfection is required herein or therein, (ii) except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason cease to be in full force and effect, or (iii) any Obligor shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document.

(m) **Budget, Milestones, Bankruptcy Court, Etc**.

(i) the Debtor deviates from the Approved Budget in any way that is greater than the Permitted Variances.

(ii) The Debtor fails to satisfy any of the Milestones.

(iii) (x) The Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or the Debtor shall file a motion or other pleading seeking the dismissal of the Cases under Section 1112 of the Bankruptcy Code or otherwise without the consent of the Administrative Agent or (y) a trustee under Chapter 11 of the Bankruptcy Code or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in the Case.

(iv) Except as set forth in the DIP Orders, as applicable: (x) an application shall be filed by the Debtor for the approval of any other Superpriority Claim (and the motion seeking approval of the Loan Documents and entry of the DIP Orders shall not constitute such an application) or (y) an order of the Bankruptcy Court shall be entered granting any other Superpriority Claim in the Cases that is *pari passu* with or senior to the claims of the Administrative Agent against the Debtor hereunder or under any of the other Loan Documents or (z) the Debtor shall permit there to arise or otherwise be granted any such *pari passu* or senior Superpriority Claim.

(v) The Bankruptcy Court shall enter an order or orders (other than the DIP Orders) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code: (x) to permit any creditor to foreclose (or the granting to such creditor of a deed in lieu of foreclosure or the like) on any Collateral, (y) with respect to any lien of or the granting of any lien on any Collateral to any federal, state or local governmental or environmental authority or regulatory agency or (z) to permit other actions that would have a Material Adverse Effect on the Debtor or its estate.

(vi) (w) An order of the Bankruptcy Court (or any appellate court) shall be entered reversing, amending, supplementing, staying for a period of seven days or more, vacating or otherwise amending, supplementing or modifying the Interim DIP Order or the Final DIP Order, or the Debtor shall apply for the authority to do so, in each case in a manner that is adverse to any Lender, without the prior written consent of the Administrative Agent, (x) the Interim DIP Order (prior to the entry of the Final DIP Order) or Final DIP Order (at all times thereafter) shall cease

to comply with the DIP Orders in any material respect, (y) the Debtor shall fail to comply with the DIP Orders in any material respect, or (z) a final non-appealable order in the Case shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Administrative Agent.

(vii) Except as permitted by the DIP Orders or as otherwise agreed to by the Administrative Agent, the Debtor shall make (or the Debtor shall apply for authority to make) any Pre-Petition Payment other than Pre-Petition Payments authorized by the Bankruptcy Court in accordance with the "first day" orders of the Bankruptcy Court as set forth in the Approved Budget.

(viii) A Chapter 11 Plan (or disclosure statement related thereto) that is not an Acceptable Chapter 11 Plan (or disclosure statement related thereto) shall be filed or confirmed in the Case or any order shall be entered which dismisses the Case and which order does not provide for termination of the Commitments and payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations as to which no claim has been asserted) or the Debtor shall seek confirmation of any such plan or entry of any such order.

(ix) The entry of an order in the Case amending, supplementing, staying, reversing, vacating or otherwise modifying (i) any Loan Document, (ii) the Interim DIP Order, (iii) the Final DIP Order, (iv) any order confirming an Acceptable Chapter 11 Plan, or (v) the Confirmation Order, in each case without the prior written consent of the Administrative Agent.

(x) The bringing of a motion or taking of any action, in each case, by the Debtor in the Case, or the entry of any order by the Bankruptcy Court in the Case (v) without the consent of the Administrative Agent, to obtain additional financing under Section 364(c) and (d) of the Bankruptcy Code that does not provide for the repayment of the Loans and all other Obligations in full in cash on the date of closing of such additional financing or to grant any Lien upon or affecting any Collateral, (w) that requests or seeks authority for or that approves or provides authority to take any other action or actions adverse to the Administrative Agent or any Lender or and of their rights and remedies hereunder or their interest in the Collateral, (x) to avoid repayment of any portion of the Loans or other Obligations, (y) to require repayment of any portion of the payments made on account of the Loans or other Obligations or (z) to limit the right of the Lenders to credit bid any portion of the Loans.

(xi) The Bankruptcy Court shall have entered an order in the Case terminating the Debtor's exclusive right to file or solicit acceptances of a plan or plan of reorganization pursuant to Section 1121 of the Bankruptcy Code.

(xii) The Debtor shall make any attempt or take any action to reduce, setoff or subordinate the Loans, Obligations or any Liens securing the Loans or other Obligations to any other Indebtedness.

11.02 Remedies. Upon the occurrence of any Event of Default under this Agreement or any DIP Order, then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may, by notice to the Borrower, without further order of or application to the Bankruptcy Court and notwithstanding the automatic stay, declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so

declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

11.03 Additional Remedies. In the event any Event of Default has occurred and is continuing, if the Borrower or any of its Subsidiaries shall be in uncured default under a Material Agreement, the Administrative Agent or the Lenders shall have the right (but not the obligation) to cause the default or defaults under such Material Agreement to be remedied (including without limitation by paying any unpaid amount thereunder) and otherwise exercise any and all rights of the Borrower or such Subsidiary, as the case may be, thereunder, as may be necessary to prevent or cure any default. Without limiting the foregoing, upon any such default, the Borrower and each of its Subsidiaries shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as may reasonably be required of the Borrower or such Subsidiary to permit the Administrative Agent and the Lenders to cure any default under the applicable Material Agreement or permit the Administrative Agent and the Lenders to take such other action required to enable the Administrative Agent and the Lenders to cure or remedy the matter in default and preserve the interests of the Administrative Agent or Lenders. Any amounts paid by the Administrative Agent or Lenders pursuant to this **Section 11.03** shall be payable on demand by Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "***Obligations***." Any amounts paid by the Administrative Agent or any such Lender or Lenders, as the case may be, pursuant to this **Section 11.03** shall be payable on demand by the Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "***Obligations***."

SECTION 12
THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to **clause (c)** below:

(a) **Appointment of the Administrative Agent**. Each of the Lenders hereby irrevocably appoints Perceptive Credit Holdings III, LP (together with any successor the Administrative Agent pursuant to **Section 12.09**) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from the Borrower or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) **Duties as Collateral and Disbursing Agent**. Without limiting the generality of **Section 12.01(a)**, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary

or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by any Obligor with, and cash and Permitted Cash Equivalent Investments held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties**. The Lenders and the Obligors hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09**, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature and do not (and are not intended to) create any fiduciary obligations, notwithstanding the use of the defined term "the Administrative Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**.

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

12.03 Use of Discretion.

(d) **No Action without Instructions**. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(e) **Right Not to Follow Certain Instructions**. Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12**, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Parties thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole reasonable discretion, contrary to any Loan Document, applicable Law or the best interests of the Administrative Agent or any of its Affiliates or Related Parties.

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this **Section 12** to the extent provided by the Administrative Agent.

12.05 Reliance and Liability.

(f) The Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any document and information and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(g) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waives and shall not assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Majority Lenders or for the actions or omissions of any of their Related Parties selected with reasonable care (other than employees,

officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender and the Borrower hereby waives and agrees not to assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action it might have against the Administrative Agent based thereon.

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

12.07 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of each Obligor and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document

or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Obligor), from and against such Lender's aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent or any of its Related Parties in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such Loan Document, or, in each case, any action taken or omitted to be taken by the Administrative Agent or any of its Related Parties under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent or any of its Related Parties to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

12.09 Resignation of the Administrative Agent.

(a) At any time upon not less than five (5) Business Days prior written notice, the Administrative Agent may resign as the "the Administrative Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent), effective on the date set forth in such notice, which effective date shall not be less than five (5) (or more than thirty (30)) days following delivery of such notice. If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right to appoint a successor to the Administrative Agent; provided that if a successor to the Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent, then the resigning Administrative Agent may, on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor to the Administrative Agent.

(b) Effective immediately upon its resignation, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor the Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Parties shall no

longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent continues to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Administrative Agent shall take such action as may be reasonably necessary to assign to the successor the Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor the Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs the Administrative Agent to release (or, in the case of **Section 12.10(b)(ii)**, release or subordinate) the following:

(a) [reserved]; and

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any property subject to a Lien described in **Section 9.02(c)** and (iii) all of the Collateral and all Obligors, upon (w) termination of the Commitments, (x) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable, (y) deposit of cash collateral with respect to all contingent Obligations, in amounts and on terms and conditions and with parties satisfactory to the Administrative Agent and each Indemnified Party that is owed such Obligations and (z) to the extent requested by the Administrative Agent, receipt by the Secured Parties of liability releases from the Obligors each in form and substance acceptable to the Administrative Agent.

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guarantees and Liens when and as directed in this **Section 12.10**.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender so long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this **Section 12** and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Proportionate Share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled

to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

SECTION 13
[RESERVED]

SECTION 14
MISCELLANEOUS

14.01 No Waiver. No failure on the part of the Administrative Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by Law.

14.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, another Obligor, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). Notwithstanding anything to the contrary in this Agreement or any other Loan Document, notices, documents, certificates and other deliverables to the Lenders by any Obligor may be made solely to the Administrative Agent and the Administrative Agent shall promptly deliver such notices, documents, certificates and other deliverables to the Lenders.

14.03 Expenses, Indemnification, Etc.

(a) **Expenses**. Each Obligor, jointly and severally, agrees to pay or reimburse (i) the Administrative Agent and the Lenders for all of their reasonable costs and expenses (including the reasonable fees and expenses of Morrison & Foerster LLP, counsel to the Administrative Agent, in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) reasonable and documented out-of-pocket costs and expenses (including printing, reproduction, document delivery, communication and travel costs, if any, and post-closing costs and expenses, including in connection with any amendments, consents, waivers or other modifications, if any) and (z) the negotiation or preparation of any modification, supplement or

waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) the Administrative Agent and the Lenders for all of their out of pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default.

(b) **Exculpation, Indemnification, etc.**

(i) In no event shall the Administrative Agent, any Lender, any successor, transferee or assignee of the Administrative Agent or any Lender, or any of their respective Affiliates, directors, officers, employees, attorneys, agents, advisors or controlling parties (each, an "***Exculpated Party***") have any obligation or responsibility for (and the Obligors jointly and severally waive any claims they may have in respect of) any Loss, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans; provided that, nothing in this **clause (i)** shall relieve any Obligor of any obligation such Obligor may have to indemnify an Indemnified Party, as provided in **clause (ii)** below, against any special, indirect, consequential or punitive damages asserted against such Indemnified Party by a third party. Each Obligor agrees, to the fullest extent permitted by applicable Law, that it will not assert, directly or indirectly, any Claim against any Exculpated Party with respect to any of the foregoing.

(ii) Each Obligor, jointly and severally, hereby indemnifies the Administrative Agent, each Lender, each of their respective successors, transferees and assigns and each of their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding (each, a "***Proceeding***") brought by a third party or the preparation by any Indemnified Party of any defense with respect thereto arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the Transactions or any use made or proposed to be made with the proceeds of the Loans, whether or not such Proceeding is brought by any Obligor, any of its Subsidiaries, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. No Obligor shall assert any Claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. This **Section 14.03(b)** shall not apply with respect to Taxes other than any Taxes that represent Losses arising from any non-Tax Claim.

14.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document may be modified or supplemented

only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or any Commitment;

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to the Lenders;

(iii) reduce the principal of, or the rate of interest specified herein (it being agreed that waiver of the default interest shall only require the consent of Required Lenders) or the amount of interest payable in cash specified herein on any Loan, or of any fees or other amounts payable hereunder or under any other Loan Document;

(iv) amend or waive compliance with the conditions precedent to the obligations of Lenders to make Loans in Section 6.02;

(v) amend, modify, discharge, terminate or waive any Security Document if the effect is to discharge the Borrower or any Subsidiary from their respective Obligations, or release a material part of the Collateral, in each case other than pursuant to the terms of hereof and thereof; or

(vi) amend this **Section 14.04** or the definition of "**Majority Lenders**".

(c) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Majority Lenders to the Administrative Agent within ten (10) Business Days following receipt of notice thereof.

14.05 Successors and Assigns.

(a) **General**. The provisions of this Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the

provisions of **Section 14.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 14.05(e)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 14.05(h)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 14.05(f)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender**. Any Lender may at any time assign to any Person all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to any Obligor, any Affiliate of any Obligor, or any employees or directors of any Obligor at any time, and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent. Subject to the recording thereof by the Lender pursuant to **Section 14.05(d)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 14.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 14.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 14.05(e)**.

(c) **Amendments to Loan Documents**. Each of the Administrative Agent, the Lenders, the Borrower and its Subsidiaries agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Administrative Agent, the Lenders the Borrower and its Subsidiaries, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 14.05**.

(d) **Register**. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Administrative Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or any Obligor or any

of its Subsidiaries or Affiliates) (each, a "***Participant***") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender shall not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 14.05(f)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Section 5** (subject to the requirements and limitations therein including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.05(b)**; provided that such Participant agrees to be subject to the provisions of **Section 5.03(h)** as if it were an assignee under **Section 14.05(b)** above. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Sections 5.01** or **5.03** than such Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) **Participant Register**. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other Obligations under the Loan Documents (the "***Participant Register***"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, or its other Obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register

(h) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that

no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

14.06 Survival. The obligations of the Borrower under **Sections 5.01**, **5.02**, **5.03**, **14.03**, **14.05**, **14.06**, **14.09**, **14.10**, **14.11**, **14.12**, **14.13**, and **14.14** shall survive the repayment of the Obligations and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty.

14.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

14.08 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. Any signature (including, without limitation, (x) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record and (y) any facsimile or .pdf signature) hereto or to any other certificate, agreement or document related to this Agreement, and any contract formation or record-keeping, in each case, through electronic means, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

14.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York and, to the extent applicable, the Bankruptcy Code.

14.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the federal or state courts in New York, New York and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 14.10(a)** is for the benefit of the Administrative Agent and the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the

extent allowed by any applicable Law, the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process**. Nothing herein shall in any way be deemed to limit the ability of the Administrative Agent and the Lenders to serve any process or summons in any manner permitted by any applicable Law.

(c) **Waiver of Venue, Etc**. Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

14.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

14.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

14.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND SHALL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

14.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any applicable Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

14.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

14.16 Confidentiality. The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them in writing by any Obligor pursuant to this Agreement that is designated by such Obligor as confidential in accordance with its customary procedures for handling its own confidential information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) subject to an agreement to comply with the provisions of this Section, to the Administrative Agent, any other Lender, any Affiliate of a Lender or any assignee, (ii) subject to an agreement to comply with the provisions of this Section, to any actual or prospective direct or indirect counterparty to any Hedging Agreement (or any professional advisor to such counterparty), (iii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its "***Related Parties***"); provided that such Related Parties are subject to obligations of confidentiality at least as restrictive as set forth in this **Section 14.16**, (iv) upon the request or demand of any Governmental Authority or any Governmental Authority having jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any applicable Law, (vi) if requested or required to do so in connection with any litigation or similar proceeding; provided that, unless otherwise prohibited by applicable Law, court order or decree, the Administrative Agent and each Lender, as applicable, shall provide prior notice to the Obligor to allow such Obligor an opportunity to obtain a protective order, (vii) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 14.16**), (viii) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, (ix) in connection with the exercise of any remedy permitted hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating the Borrower or any of its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (xi) to any other party hereto.

14.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, 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 Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, 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 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 so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

14.18 Exit Fee. The parties hereto acknowledge and agree that, to the extent that any Exit Fee is applicable to any repayment or prepayment of principal of any Loan at any time, such Exit Fee is not intended to be a penalty assessed as a result of any such repayment or prepayment of the Loans, but rather is the product of a good faith, arm's length commercial negotiation between the Borrower and the Lenders relating to the mutually satisfactory compensation payable to the Lenders by the Borrower in respect of the Loans made hereunder. In furtherance of the foregoing, to the fullest extent permitted by applicable Law, the Obligors hereby jointly and severally waive any rights or Claims any of them may have under any such applicable Law (whether or not in effect on the Closing Date) that would prohibit or restrict the payment of the Exit Fee under any of the circumstances provided herein or in any other Loan Document, including payment after acceleration of the Loans.

14.19 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Obligors in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

14.20 USA PATRIOT Act. The Administrative Agent and the Lenders hereby notify the Borrower and its Subsidiaries that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Patriot Act***"), they are required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of the Borrower and its Subsidiaries and other information that will allow such Person to identify the Borrower or such Subsidiary in accordance with the Patriot Act.

14.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

14.22 Credit Bidding. The Debtor hereby irrevocably authorizes the Administrative Agent and each Lender to (a) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including, without limitation, under Section 363 of the Bankruptcy Code or in connection with a Chapter 11 Plan, (b) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale, transfer or other disposition thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, or (c) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by the Lender (whether by judicial action or otherwise) in accordance with applicable law.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

SYNTHEGO CORPORATION

By _____
Name: Allen Soong
Title: Chief Restructuring Officer

Address for Notices:

3696 Haven Avenue, Suite A
Redwood City, CA 94064
Attn: Accounting Department
Email: Accounting@synthego.com

ADMINISTRATIVE AGENT:

PERCEPTIVE CREDIT HOLDINGS III, LP

By: PERCEPTIVE CREDIT OPPORTUNITIES GP, LLC, its general partner

By _____
Name: Sandeep Dixit
Title: Chief Credit Officer

By _____
Name: Sam Chawla
Title: Portfolio Manager

Address for Notices:

Perceptive Credit Holdings III, LP
c/o Perceptive Advisors LLC
51 Astor Place, 10th Floor
New York, NY 10003
Attn: Sandeep Dixit
Email: Sandeep@perceptivelife.com
PCOFReporting@perceptivelife.com

LENDERS:

PERCEPTIVE CREDIT HOLDINGS III, LP

By: PERCEPTIVE CREDIT OPPORTUNITIES GP, LLC, its general partner

By _____
Name: Sandeep Dixit
Title: Chief Credit Officer

By _____
Name: Sam Chawla
Title: Portfolio Manager

Address for Notices:
Perceptive Credit Holdings III, LP
c/o Perceptive Advisors LLC
51 Astor Place, 10th Floor
New York, NY 10003
Attn: Sandeep Dixit
Email: Sandeep@perceptivelife.com
PCOFReporting@perceptivelife.com

SCHEDULE I

COMMITMENTS

INITIAL LOANS

Lender	Commitment	Proportionate Share
Perceptive Credit Holdings III, LP	$5,000,000	100%
TOTAL	**$5,000,000**	**100%**

DELAYED DRAW LOANS

Lender	Commitment	Proportionate Share
Perceptive Credit Holdings III, LP	$7,500,000	100%
TOTAL	**$7,500,000**	**100%**

ROLL UP LOANS

Lender	Commitment	Proportionate Share
Perceptive Credit Holdings III, LP	$37,500,000	100%
TOTAL	**$37,500,000**	**100%**

SCHEDULE 8.22

CASE MILESTONES

Event	Milestone Required Deadline
The Debtor and the DIP Lenders shall have executed the Stalking Horse APA.	Petition Date
The Debtor shall have filed (a) the Bid Procedures and Scheduling Motion seeking approval of (i) the bidding procedures, (ii) the Stalking Horse APA (including the bid protections contained therein), and (iii) the sale of substantially all of the Debtor's assets; and (b) the DIP Motion.	No later than one (1) Business Day following the Petition Date
The Debtor shall have obtained entry of the Interim DIP Order, in form and substance acceptable to the DIP Lenders.	No later than three (3) Business Day following the Petition Date
The Debtor shall have filed (a) an Acceptable Chapter 11 Plan (including any related disclosure statement), and (b) a motion seeking conditional approval of the disclosure statement.	No later than twenty-four (24) days following the Petition Date
The Debtor shall have obtained entry of (i) an order approving the Bidding Procedures and Scheduling Motion (including approval of the bid protections contained in the Stalking Horse APA) and (ii) the Final DIP Order, in each case in form and substance acceptable to the DIP Lenders	No later than thirty (30) days following the Petition Date
The Debtor shall have obtained entry of the order conditionally approving the disclosure statement for an Acceptable Chapter 11 Plan.	No later than forty-six (46) days following the Petition Date
The Debtor shall have held an auction, if applicable.	No later than fifty-two (52) days following the Petition Date
The Debtor shall have obtained entry of the Sale Order in form and substance acceptable to the DIP Lenders.	No later than fifty-eight (58) days following the Petition Date
The Debtor shall have consummated the sale in accordance with the Sale Order.	No later than seventy (70) days following the Petition Date
The Debtor shall have obtained entry of an order confirming an Acceptable Chapter 11 Plan.	No later than eighty-four (84) days following the Petition Date

The effective date of an Acceptable Chapter 11 Plan shall have occurred.	No later than eighty-eight (88) days following the Petition Date

Exhibit B

Approved Budget

SYNTHEGO CORPORATION

DIP BUDGET

DIP Budget

($ in 000s)

N1

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	13 Wk
Week Ended	5/9	5/16	5/23	5/30	6/6	6/13	6/20	6/27	7/4	7/11	7/18	7/25	8/1	Total
REVENUE														
Gross Billings	**657**	**271**	**158**	**167**	**652**	**778**	**158**	**158**	**1,503**	**271**	**158**	**219**	**158**	**5,305**
CASH FLOW														
Net A/R Collections	537	94	158	347	657	158	41	167	652	665	41	158	1,503	**5,177**
Receipts from EditCo	-	793	133	-	-	113	-	-	-	113	-	-	-	**1,152**
Total Receipts	**537**	**887**	**291**	**347**	**657**	**271**	**41**	**167**	**652**	**778**	**41**	**158**	**1,503**	**6,329**
Oper Disbursements														
Payroll/Benefits	-	860	-	860	-	860	-	860	-	860	-	860	68	**5,228**
Production	162	162	162	162	162	162	162	162	162	162	162	162	162	**2,112**
Facilities	30	92	50	91	142	30	109	80	162	30	109	80	162	**1,165**
G&A/Other Opex	105	598	105	167	135	105	194	198	310	105	194	167	176	**2,559**
Total Oper Disb	**297**	**1,713**	**317**	**1,280**	**439**	**1,157**	**466**	**1,301**	**635**	**1,157**	**466**	**1,269**	**569**	**11,064**
Operating Cash Flow	**240**	**(826)**	**(26)**	**(933)**	**218**	**(886)**	**(424)**	**(1,133)**	**17**	**(379)**	**(424)**	**(1,112)**	**934**	**(4,735)**
Cumulative	***240***	***(586)***	***(613)***	***(1,546)***	***(1,328)***	***(2,214)***	***(2,638)***	***(3,772)***	***(3,755)***	***(4,133)***	***(4,557)***	***(5,669)***	***(4,735)***	
Non-Op Disb														
Independent Director Fees	-	-	-	-	105	-	-	-	105	-	-	-	105	**315**
Taxes	-	-	-	-	-	-	-	-	-	-	-	-	28	**28**
Utility Deposit	-	65	-	-	-	-	-	-	-	-	-	-	-	**65**
UST	-	-	-	-	-	-	-	-	-	-	-	-	90	**90**
Rstrx Pro Fees / Reserve	475	500	405	330	435	310	300	255	340	210	230	210	1,755	**5,755**
Lender Pro Fees (Adeq Protect)	50	40	40	40	40	40	40	40	40	40	40	30	20	**500**
BK Estate Wind-Down Funding	-	-	-	-	-	-	-	-	-	-	-	-	700	**700**
Total Non-Op Disb	**525**	**605**	**445**	**370**	**580**	**350**	**340**	**295**	**485**	**250**	**270**	**240**	**2,698**	**7,453**
Net Cash Flow	**(285)**	**(1,431)**	**(471)**	**(1,303)**	**(362)**	**(1,236)**	**(764)**	**(1,428)**	**(468)**	**(629)**	**(694)**	**(1,352)**	**(1,764)**	**(12,188)**
Cumulative	***(285)***	***(1,716)***	***(2,188)***	***(3,491)***	***(3,853)***	***(5,089)***	***(5,853)***	***(7,282)***	***(7,750)***	***(8,378)***	***(9,073)***	***(10,424)***	***(12,188)***	
LIQUIDITY														
Cash Balance														
Beginning Cash	748	5,463	4,032	3,560	2,257	5,895	4,659	3,895	4,466	3,998	3,370	2,675	2,824	**748**
Lender Advances	5,000	-	-	-	4,000	-	-	2,000	-	-	-	1,500	-	**12,500**
Net Cash Flow	(285)	(1,431)	(471)	(1,303)	(362)	(1,236)	(764)	(1,428)	(468)	(629)	(694)	(1,352)	(1,764)	**(12,188)**
Ending Cash	**5,463**	**4,032**	**3,560**	**2,257**	**5,895**	**4,659**	**3,895**	**4,466**	**3,998**	**3,370**	**2,675**	**2,824**	**1,060**	**1,060**
Restricted Cash	225	225	225	225	225	225	225	225	225	225	225	225	225	**225**
Unrestricted Cash	**5,238**	**3,807**	**3,335**	**2,032**	**5,670**	**4,434**	**3,670**	**4,241**	**3,773**	**3,145**	**2,450**	**2,599**	**835**	**835**
DIP (Roll Up)														
Beginning Balance	-	17,500	17,500	17,500	42,500	46,500	46,500	46,500	48,500	48,500	48,500	48,500	50,000	**-**
Roll Up Conversion	12,500	-	-	25,000	-	-	-	-	-	-	-	-	-	**37,500**
Post-petition Advances	5,000	-	-	-	4,000	-	-	2,000	-	-	-	1,500	-	**12,500**
Ending DIP Balance	**17,500**	**17,500**	**17,500**	**42,500**	**46,500**	**46,500**	**46,500**	**48,500**	**48,500**	**48,500**	**48,500**	**50,000**	**50,000**	**50,000**

N1: This DIP Budget is a cash budget that does not include accrued but unpaid employee obligations, certain administrative expenses, or priority claims that may be owed by the Debtor as of the conclusion of this DIP Budget.

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SYNTHEGO CORPORATION,[1] Debtor.	Chapter 11 Case No. 25-10823 (MFW) **Related to Docket No. 11**

INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION SECURED FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion [Docket No. 11] (the "**DIP Motion**") dated May 6, 2025, of the above-captioned debtor and debtor-in-possession (the "**Debtor**") in the above-referenced chapter 11 case (the "**Chapter 11 Case**"), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"); Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); and Rules 2002-1(b), 4001-2, 9006-1, and 9013-1 of the Local Bankruptcy Rules for the District of Delaware (the "**Local Rules**"), for entry of an interim order (the "**Interim Order**") authorizing the Debtor to, among other things:

(i) Obtain senior secured, superpriority, debtor-in-possession financing in the aggregate principal amount of up to $50,000,000 (the "**DIP Facility**") pursuant to the terms and conditions of the DIP Credit Documents (as defined below), the Interim Order, and the Final Order (as defined below);

(ii) Enter into and perform under the (a) Senior Secured Debtor-In-Possession Term Loan Credit Agreement (the "**DIP Credit Agreement**"), substantially in the form attached as **Exhibit A** hereto, by and among Synthego Corporation, as borrower, Perceptive Credit Holdings III, LP and each other lender from time to time party thereto (in such capacities, the "**DIP Lenders**"), and Perceptive Credit Holdings

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

III, LP, as administrative agent for the DIP Lenders (in such capacity, the "**DIP Agent**," and, together with the DIP Lenders, the "**DIP Secured Parties**") and (b) all other documents, including, without limitation, security agreements or other collateral documents, executed or filed in connection therewith (together with the DIP Credit Agreement, the "**DIP Credit Documents**");

(iii) Borrow, on an interim basis, pursuant to the DIP Credit Documents and this Interim Order, post-petition financing in an aggregate principal amount of up to $5,000,000, plus the Interim Roll-Up Loans (as defined below) (collectively, the "**Initial DIP Loans**") and obtain other financial accommodations from the DIP Secured Parties pursuant to the DIP Credit Agreement, the other DIP Credit Documents, and the Interim Order;

(iv) Borrow, on a final basis, pursuant to the DIP Credit Documents and the Final Order, up to four (4) borrowings of delayed draw post-petition financing in an aggregate principal amount of up to $7,500,000 (for a total of $12,500,000), plus the Final Roll-Up Loans (as defined below) (the "**Final DIP Loans**," and together with the Initial DIP Loans, the "**DIP Loans**") and obtain other financial accommodations from the DIP Secured Parties pursuant to the DIP Credit Agreement, the other DIP Credit Documents, and the Final Order;

(v) Execute and deliver the DIP Credit Agreement and the other DIP Credit Documents;

(vi) Grant to the DIP Secured Parties allowed super-priority administrative expense claims in the Chapter 11 Case and any Successor Case (as defined below) for the DIP Facility and all obligations of the Debtor owing under the DIP Credit Documents (collectively, the "**DIP Obligations**") subject to the priorities set forth herein;

(vii) Grant to the DIP Secured Parties automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("**Cash Collateral**"), which liens shall be subject to the priorities set forth herein;

(viii) Use the proceeds of the DIP Facility in accordance with the DIP Credit Agreement, the DIP Credit Documents, and this Interim Order, in all cases in accordance with the Approved Budget (as defined in the DIP Credit Agreement), a copy of which is attached hereto as **Exhibit B**, and as otherwise provided in the DIP Credit Documents;

(ix) Use any Prepetition Collateral (as defined below), including Cash Collateral, and provide adequate protection to the parties that may have an interest in such Prepetition Collateral, including Cash Collateral, for any "decrease in the value," as that term is used in section 361 of the Bankruptcy Code ("**Diminution in Value**") of their interests therein;

(x) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Credit Documents and this Interim Order;

(xi) Subject only to and effective upon entry of the Final Order (as defined below), waive the Debtor's ability to surcharge against any DIP Collateral or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtor under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(xii) Obtain a final hearing (the "**Final Hearing**") to consider entry of an order (the "**Final Order**") granting the relief requested in the DIP Motion on a final basis and approving the form of notice with respect to the Final Hearing;

(xiii) Waive, to the extent applicable, any stay of the immediate effectiveness of this Interim Order imposed by the Bankruptcy Code or the Bankruptcy Rules, such that this Interim Order shall be immediately effective upon its entry on the docket of the United States Bankruptcy Court for the District of Delaware (the "**Court**"); and

(xiv) Obtain such other and further relief as is just and proper.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Craig Christianson in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the "**Christianson First Day Declaration**") and the *Declaration of Allen Soong in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the "**Soong First Day Declaration**" and, together with the Christianson First Day Declaration, the "**First Day Declarations**"), and the evidence submitted or adduced and the arguments of counsel made at the hearing on this Interim Order (the "**Interim Hearing**"); and notice of the DIP Motion and the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b)-(d), and 9014, and all applicable Local Rules; and the Interim Hearing having been held and concluded; and it appearing that granting the relief requested in the DIP Motion on an interim basis is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing, and is otherwise fair and reasonable and in the best interests of the Debtor, its estate, and its creditors, and is essential for the preservation of the value of the Debtor's assets; and it appearing that the Debtor's entry into the

DIP Credit Documents is a sound and prudent exercise of the Debtor's business judgment; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved, or overruled by the Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, IT IS FOUND AND DETERMINED THAT:[2]

A. **Petition Date**. On May 5, 2025 (the "**Petition Date**"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code with this Court.

B. **Debtor in Possession**. The Debtor is authorized to continue operating its business and managing its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors (the "**Creditors' Committee**") has been appointed in this Chapter 11 Case.

C. **Jurisdiction and Venue**. This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Venue for this Chapter 11 Case and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution.

D. **Notice**. Notice of the Interim Hearing and notice of the DIP Motion have been provided by the Debtor to (i) the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"); (ii) the United States Securities and Exchange Commission; (iii) the Office

[2] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

of the United States Attorney for the District of Delaware; (iv) the Internal Revenue Service; (v) the Debtor's thirty (30) largest unsecured creditors; (vi) counsel to the DIP Secured Parties and Prepetition Secured Parties; (vii) any party asserting a known lien in the Debtor's assets; and (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, such notice of the Interim Hearing and the DIP Motion constitutes adequate and sufficient notice and complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(b)-(d), and 9014, and the Local Rules, and no other or further notice of the DIP Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

E. **Debtor's Stipulations**. After consultation with its attorneys and financial advisors, and subject to and without prejudice to the rights of parties-in-interest as set forth in paragraph 12 herein, the Debtor, on its behalf and on behalf of its estate, admits, stipulates, acknowledges, and agrees to the following (collectively, the "**Debtor's Stipulations**"):

(i) *Prepetition Senior Secured Term Loan Facility*. Pursuant to that certain Credit Agreement and Guaranty, dated January 24, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), among Synthego Corporation, as borrower, the guarantors from time to time party thereto, the lenders from time to time party thereto (the "**Prepetition Lenders**"), and Perceptive Credit Holdings III, LP, as administrative agent (the "**Prepetition Agent**," and together with the Prepetition Lenders, the "**Prepetition Secured Parties**") (such agreement, the "**Prepetition Credit Agreement**"), the Debtor incurred indebtedness to the Prepetition Secured Parties (such facility, the "**Prepetition Facility**"). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Facility was not less than $73,411,918.28, plus interest, fees and all other obligations owing under the Prepetition Facility and as set forth in the Prepetition Credit Agreement and the other credit and

security documents related thereto (such documents, collectively, the "**Prepetition Credit Documents**," and such obligations, collectively, the "**Prepetition Obligations**").

(ii) *Prepetition Collateral*. As set forth more fully in each of the Prepetition Credit Documents, prior to the Petition Date, the Debtor granted to the Prepetition Secured Parties first-priority liens (the "**Prepetition Liens**") on substantially all of the Debtor's assets, including, but not limited to, all accounts, chattel paper, commercial tort claims, deposit accounts, books and documents, equipment, general intangibles, inventory, investment property, letter-of-credit rights, goods, intellectual property, money, and all products and proceeds of the foregoing (collectively, the "**Prepetition Collateral**"), senior to all other prepetition liens except as expressly set forth in the Prepetition Credit Documents.

(iii) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Obligations*. The Debtor acknowledges that, as of the Petition Date, (a) the Prepetition Liens on the Prepetition Collateral were and continue to be valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens on the Prepetition Collateral were properly perfected prior to the Petition Date (or perfected on or after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code); (c) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law (including any that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (the "**Permitted Liens**"); (d) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor enforceable in accordance with the terms of the Prepetition Credit Documents; (e) no offsets, recoupments, challenges, objections, defenses, claims, deductions, or counterclaims of any

kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (f) the Debtor and its estate has no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against the Prepetition Secured Parties, or any of its or their affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to the Prepetition Obligations; (g) the Debtor waives, discharges, and releases any right to challenge any of the Prepetition Obligations or the Prepetition Liens, the priority of the Debtor's obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Obligations; and (h) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code, up to the value of the Debtor's assets secured by the Prepetition Liens.

(iv) *Permitted Liens*. Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable relative to the Prepetition Liens. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtor or the Creditors' Committee (if any) to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Lien and/or security interests (other than the Prepetition Liens or the DIP Liens (as defined below)). For the purposes hereof, any alleged claim arising or asserted as a right of reclamation or return (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) is not a Permitted Lien. Any alleged claim arising or asserted as a right of reclamation

or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Facility, DIP Liens, and DIP Collateral as such claims had with respect to the Prepetition Liens in the Prepetition Collateral and the DIP Collateral.

(v) *Sale and Credit Bidding*. Any of the DIP Secured Parties or the Prepetition Secured Parties shall have the right to credit bid the entirety of (and any portion of) the Prepetition Obligations, the DIP Obligations, and/or the Adequate Protection Obligations as applicable, secured by their respective liens and security interests. For the avoidance of doubt, the DIP Roll-Up Loans and the Prepetition Obligations shall remain subject to the reservation of rights in paragraph 12 below notwithstanding any credit bid of the DIP Roll-Up Loans or the Prepetition Obligations.

(vi) *Default of the Debtor.* As of and upon the Petition Date, events of default have occurred under the terms of the Prepetition Credit Agreement.

(vii) *Limits on Lender Liability*. Nothing in this Interim Order, any of the DIP Credit Documents, any of the Prepetition Credit Documents, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtor in the operation of its business or in connection with the administration of this Chapter 11 Case or any Successor Case. The DIP Secured Parties and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral, be deemed in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et

seq., as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP Credit Documents shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtor.

(viii) *Cash Collateral*. All of the Debtor's cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtor, whether subject to control agreements or otherwise, and any amount generated by the collection of accounts receivable or other disposition of the Prepetition Collateral, and the proceeds of any of the foregoing, whether existing on the Petition Date or thereafter, constitute Cash Collateral within the meaning of section 363(a) of the Bankruptcy Code and is Prepetition Collateral of the Prepetition Secured Parties.

F. **Findings Regarding the DIP Facility**.

(i) *Need for DIP Facility and to Use Cash Collateral*. An immediate need exists for the Debtor to obtain funds from the Initial DIP Loans and to use Cash Collateral in order to continue operations, fund payroll and operating expenses, and administer and preserve the value of its estate pending the Final Hearing. The ability of the Debtor to finance its operations through the incurrence of the Initial DIP Loans and use of Cash Collateral is vital to the preservation and maintenance of the going concern value of the Debtor's estate, to maximize the value of the Debtor's assets for the benefit of its creditors, and to avoid immediate and irreparable harm to the Debtor, its estate, and its creditors.

(ii) *No Credit Available on More Favorable Terms*. The Debtor has been unable to obtain (a) unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense or (b) credit for money borrowed secured by a lien on property of its estate on more favorable terms and conditions than those provided in the DIP Credit Agreement and this

Interim Order. The Debtor is unable to obtain credit for borrowed money without granting to the DIP Secured Parties the DIP Protections (as defined below).

G. **Adequate Protection**. The Prepetition Secured Parties are entitled to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection, the Prepetition Secured Parties will receive (i) adequate protection liens and superpriority claims, as more fully set forth in paragraph 8 herein; and (ii) periodic payments and payment of reasonable and documented legal fees and out-of-pocket expenses arising before and after the Petition Date, as more fully set forth in paragraphs 2(a) and 8(e) herein; provided that nothing in the DIP Documents or herein shall (x) be construed as a consent by any of the Prepetition Secured Parties to or authorization by the Court of the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Facility authorized by this Interim Order to the extent such consent has been given or (y) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different, or additional adequate protection or assert any rights of the Prepetition Secured Parties.

H. **Sections 506(c) and 552(b)**. Subject to and effective upon entry of the Final Order granting such relief, the Debtor shall be deemed to have waived the provisions of section 506(c) of the Bankruptcy Code and any "equities of the case" exception under section 552(b) of the Bankruptcy Code as part of the DIP Facility. Further, subject to and effective upon entry of the Final Order granting such relief, no expenses of administration of this Chapter 11 Case or any other proceedings superseding or related to the foregoing, including any subsequent chapter 7 case ("**Successor Case**") shall be charged against or recovered from the DIP Collateral or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of

collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent or Prepetition Agent, as applicable, and no consent shall be implied from any action, inaction, or acquiescence by the DIP Secured Parties or Prepetition Secured Parties, as applicable. The foregoing is a condition and a material inducement to the Prepetition Secured Parties' consent to the use of Cash Collateral.

I. **Use of Proceeds of the DIP Facility**. Proceeds of the DIP Facility (net of any amounts used to pay fees, costs, and expenses under the DIP Credit Documents) shall be used in a manner consistent with the terms and conditions of the DIP Credit Agreement and this Interim Order and in accordance with the Approved Budget.

J. **Application of Proceeds of DIP Collateral**. All proceeds of any sale or other disposition of the DIP Collateral (as defined below) shall be applied in accordance with the Approved Budget and the terms and conditions of the DIP Credit Documents and this Interim Order.

K. **Roll-Up of Prepetition Obligations**. Upon entry of this Interim Order, without any further action by the Debtor or any other party, $10,000,000 of the outstanding Prepetition Obligations shall constitute DIP Obligations under and as further described in the DIP Credit Agreement (the "**Interim Roll-Up Loans**"). Upon entry of the Final Order, without any further action by the Debtor or any other party, $27,500,000 of the remaining outstanding Prepetition Obligations shall constitute DIP Obligations under and as further described in the DIP Credit Agreement (the "**Final Roll-Up Loans**" and together with the Interim Roll-Up Loans, the "**DIP Roll-Up Loans**"). The replacement and refinancing (or "roll-up") of the DIP Roll-Up Loans shall be authorized as compensation for, in consideration for, and solely on account of the agreement of

the DIP Lenders to fund amounts and provide other consideration to the Debtor under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. The Prepetition Secured Parties would not otherwise consent to the use of the Prepetition Collateral, and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the Debtor thereunder without the inclusion of (i) the Interim Roll-Up Loans, upon entry of this Interim Order, and (ii) the Final Roll-Up Loans, upon entry of the Final Order. Moreover, the replacement and refinancing of the DIP Roll-Up Loans into DIP Obligations will enable the Debtor to obtain urgently needed financing to administer this Chapter 11 Case and fund its operations. Because the DIP Roll-Up Loans are subject to the reservation of rights in paragraph 12 below and the Final Roll-Up Loans are subject to entry of a final order granting such relief, they will not prejudice the right of any other party in interest.

L. **Effect of Reversal, Good Faith**. The DIP Secured Parties have indicated a willingness to provide financing to the Debtor in accordance with the DIP Credit Agreement and this Interim Order, and provided that the DIP Obligations, DIP Liens, and other protections granted by this Interim Order and the DIP Credit Documents will not be affected by any subsequent reversal or modification of this Interim Order as provided in section 364(e) of the Bankruptcy Code. Based upon the First Day Declarations, and the record at the Interim Hearing, the DIP Secured Parties have acted in good faith in connection with negotiating the DIP Credit Documents and agreeing to provide the DIP Facility approved by this Interim Order and the DIP Secured Parties' claims, superpriority claims, security interests, and liens and other protections granted pursuant to this Interim Order and the DIP Credit Documents will have the protections provided by section 364(e) of the Bankruptcy Code. Accordingly, the DIP Secured Parties' claims, superpriority claims, replacement liens, and other protections granted pursuant to this Interim

Order will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument, or reconsideration of this Interim Order or any other order, solely to the extent such claims, superpriority claims, replacement liens, and other protections exist as of the date of any such subsequent reversal, modification, vacatur, amendment, reargument, or reconsideration.

M. **Business Judgment and Good Faith Pursuant to Section 364(e)**. Based upon the First Day Declarations, and the record at the Interim Hearing:

(i) The terms and conditions of the DIP Facility and the DIP Credit Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration;

(ii) The DIP Credit Documents and use of Cash Collateral were negotiated in good faith and at arm's length between the Debtor and the DIP Secured Parties; and

(iii) The proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Secured Parties are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

N. **Findings Regarding Corporate Authority**. The Debtor has all requisite corporate authority to execute and deliver the DIP Credit Documents to which it is a party and to perform its obligations thereunder.

O. **Relief Essential; Best Interest; Good Cause for Immediate Entry**. Good cause has been shown for the relief requested in the DIP Motion (and as provided in this Interim Order) and such relief is necessary, essential, and appropriate for the preservation of the Debtor's assets, business, and property. It is in the best interest of the Debtor's estate to be allowed to enter into the DIP Facility contemplated by the DIP Credit Agreement. Accordingly, this Court finds that

entry of this Interim Order is necessary to avoid immediate and irreparable harm to the Debtor's estate, is critical to the Debtor's ability to maximize the value of its estate, is in the best interests of the Debtor's estate, and is necessary, essential, and appropriate for the continued operation of the Debtor's business and the management and preservation of its assets and properties.

NOW, THEREFORE, based upon the foregoing findings, and upon consideration of the DIP Motion and the record made before this Court with respect to the DIP Motion, including the record created during the Interim Hearing, and with the consent of the Debtor, the DIP Agent, and the Prepetition Secured Parties to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. **Motion Granted**. The DIP Motion is granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Credit Agreement. Any objections to the DIP Motion with respect to entry of this Interim Order to the extent not withdrawn, waived, or otherwise resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. The use of Cash Collateral (as defined herein) on an interim basis is authorized, subject to the terms of this Interim Order.

2. **DIP Credit Documents**.

(a) **Approval of Entry into and Performance Under the DIP Credit Documents**. The DIP Facility, including the Interim Roll-Up Loans, is hereby approved; provided that the Final Roll-Up Loans and Exit Fee (as defined in the DIP Credit Agreement) shall be subject to entry of the Final Order. The Debtor is authorized and empowered to execute and deliver the DIP Credit Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Credit Documents, to execute and deliver all instruments and documents that may be required or necessary for the performance by the Debtor

under the DIP Credit Documents and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Credit Documents, and to take such further acts as may be necessary. The Debtor is hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, indemnities, and other amounts described in the DIP Credit Agreement and all other DIP Credit Documents as such become due, including, without limitation, reasonable attorneys' fees and disbursements of the DIP Secured Parties incurred both (x) before the Petition Date, which amounts shall be deemed approved and not required to comply with U.S. Trustee fee guidelines, and (y) on or after the Petition Date, subject to the notice provisions set forth in paragraph 8(e) herein. The Debtor shall observe and comply with all of the financing, reporting and performance covenants and conditions set forth in the DIP Credit Agreement.

(b) **Interim Authorization to Borrow/and or Guarantee**. To enable the Debtor to continue to preserve the value of its estate during the period prior to entry of the Final Order (the "**Interim Period**") and subject to the terms and conditions of this Interim Order, upon the execution of the DIP Credit Agreement and the other DIP Credit Documents, the Debtor is hereby authorized to borrow the Initial DIP Loans up to a total committed amount of $5,000,000 under the DIP Credit Documents.

(c) **Conditions Precedent**. The DIP Lenders shall have no obligation to make any loan or advance under the DIP Credit Agreement during the Interim Period unless the conditions precedent to making such loan under the DIP Credit Agreement have been satisfied in full or waived in writing (which may be via email) by the DIP Lenders in their respective sole discretion.

(d) **DIP Liens**. In order to secure the DIP Obligations, effective and automatically perfected immediately upon entry of this Interim Order, pursuant to sections 361,

362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, subject to the Carve Out, the DIP Agent is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens on (collectively, the "**DIP Liens**") all real, personal, and mixed property (including equity interests), whether now existing or hereafter arising and wherever located, tangible and intangible, of the Debtor's estate, including, without limitation, all inventory, accounts receivable, general intangibles, contracts, chattel paper, owned real estate, real property leaseholds, governmental approvals, licenses and permits, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, securities, partnership interests, membership interests in limited liability companies, and capital stock of any subsidiary of the Debtor, including, without limitation, the products and proceeds thereof (the "**DIP Collateral**") and including (i) subject to entry of a Final Order granting such relief, any avoidance actions arising under Chapter 5 of the Bankruptcy Code or applicable state law equivalents (such actions, collectively, "**Avoidance Actions**") and commercial tort claims; and (ii) subject to entry of a Final Order granting such relief, the Debtor's rights under sections 506(c) and 550 of the Bankruptcy Code and the proceeds thereof. Notwithstanding the foregoing, the DIP Collateral shall not include (x) any contract or license under which the granting of the DIP Liens thereon would constitute a breach or termination thereof other than to the extent such breach or termination would be rendered ineffective pursuant to applicable law (including applicable state law or the Bankruptcy Code) but shall, in any event, include the proceeds of such contracts and licenses or, (y) subject to the terms and conditions of paragraph 9(b) hereof, the funds held in the Funded Reserve Account (as defined below). Notwithstanding anything to the contrary herein, the DIP Agent shall exercise

commercially reasonable efforts to turn to the Prepetition Collateral first before exercising remedies against any other DIP Collateral.

(e) **DIP Lien Priority**. The DIP Liens securing the DIP Obligations are valid, automatically perfected, and non-avoidable, and the DIP Agent shall have, subject to the Carve Out, (i) pursuant to section 364(c)(2) of the Bankruptcy Code, first-priority perfected security interests, liens, and mortgages on all DIP Collateral not subject to valid, perfected, enforceable, and non-avoidable security interests, liens, or mortgages in existence on the Petition Date; (ii) pursuant to section 364(c)(3) of the Bankruptcy Code, junior security interests, liens, and mortgages only with respect to DIP Collateral that is subject to valid Permitted Liens; and (iii) pursuant to section 364(d), first-priority, priming perfected security interests, liens, and mortgages on all other DIP Collateral, including the Prepetition Collateral. For the avoidance of doubt, the DIP Liens shall be senior to the Prepetition Liens and junior to the Carve Out. Other than as set forth herein or in the DIP Credit Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in this Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in this Chapter 11 Case or any Successor Case, upon the conversion of this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of this Chapter 11 Case or any Successor Case. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

(f) **Enforceable Obligations**. The DIP Credit Documents shall constitute and evidence the valid and binding obligations of the Debtor, which obligations shall be enforceable

against the Debtor, its estate, and any successors thereto and its creditors or representatives thereof, in accordance with their terms.

(g) **Protection of DIP Agent and Other Rights**. From and after the Petition Date, the Debtor shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Credit Agreement and this Interim Order and in strict compliance with the Approved Budget (subject to any Permitted Variance as defined below).

(h) **Superpriority Administrative Claim Status**. Upon entry of this Interim Order, the DIP Lenders are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed super-priority administrative expense claims in this Chapter 11 Case and any Successor Case (collectively, the "**DIP Superpriority Claims**" and, together with the DIP Liens, the "**DIP Protections**") for all DIP Obligations, subject only to the Carve Out: (i) having priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in this Chapter 11 Case and any Successor Case, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order granting such relief), 507(a), 507(b), 546(c), 546(d), 552(b) (subject to entry of the Final Order granting such relief), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (ii) which shall at all times be senior to the rights of the Debtor and its estate, and any subsequent trustee or other estate representative to the extent permitted by law; provided that the DIP Superpriority Claims shall not be payable from the proceeds of Avoidance Actions or commercial tort claims pending entry of a Final Order granting such relief. Notwithstanding anything to the contrary herein, the DIP Agent shall exercise commercially reasonable efforts to satisfy the DIP

Superpriority Claims from the proceeds of the Prepetition Collateral first before turning to the proceeds of any other DIP Collateral.

3. **Authorization to Use Proceeds of DIP Facility**. Pursuant to the terms and conditions of this Interim Order, the DIP Credit Agreement, and the other DIP Credit Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtor is authorized to use the advances under the DIP Credit Agreement during the period commencing immediately after the entry of the Interim Order and terminating upon the occurrence of a DIP Termination Event (as defined below) and the termination of the DIP Credit Agreement in accordance with its terms and subject to the provisions hereof. The Debtor and the DIP Agent may agree in writing (which may be via email) to modify the Approved Budget in their discretion at any time that the DIP Facility remains outstanding without further notice or approval by this Court.

4. **DIP Roll-Up Loans**. Upon entry of this Interim Order and subject to the reservation of rights in paragraph 12 below, without any further action by the Debtor or any other party, and as a condition to the provision of liquidity under the DIP Facility, the Interim Roll-Up Loans are approved and the Interim Roll-Up Loans shall be replaced and refinanced and shall constitute DIP Obligations.

5. **Access to Records**. The Debtor shall provide the DIP Secured Parties' advisors with all reporting and other information required to be provided to the DIP Secured Parties under the DIP Credit Documents. In addition to, and without limiting, whatever rights to access the DIP Secured Parties have under the DIP Credit Documents, upon reasonable notice to counsel to the Debtor (email being sufficient), at reasonable times during normal business hours, the Debtor shall permit representatives, professionals, agents, and employees of the DIP Secured Parties to have

reasonable access to (i) inspect the Debtor's assets, and (ii) reasonably requested information (including historical information and the Debtor's books and records) and personnel, including regularly scheduled meetings as mutually agreed with senior management of the Debtor and other advisors of the Debtor (during normal business hours), and the DIP Secured Parties shall be provided with access to all information they shall reasonably request, excluding any information for which confidentiality is owed to third parties, information subject to attorney-client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law.

6. **Authorization to Use Cash Collateral**. The Debtor is hereby authorized to use Cash Collateral (including, without limitation, after the repayment in full of the DIP Obligations) pursuant to the terms of this Interim Order and the DIP Credit Documents, as applicable, and in accordance with the Approved Budget (subject to the Permitted Variances), subject to paragraph 19 herein. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtor or its estate outside the ordinary course of business, or the Debtor's use of any Cash Collateral (including, without limitation, proceeds of the Prepetition Collateral), except as expressly permitted in this Interim Order, the DIP Credit Agreement, and the other DIP Credit Documents, and in accordance with the Approved Budget (subject to the Permitted Variances).

7. **Post-Petition Lien Perfection**. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and Adequate Protection Liens (as defined below) without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens or the Adequate Protection Liens to

the priorities granted herein. Notwithstanding the foregoing, the DIP Agent or the Prepetition Agent, as applicable, may, in its sole discretion, file such financing statements, mortgages, notices of liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of this Chapter 11 Case. The Debtor shall execute and deliver to the DIP Agent and the Prepetition Agent all such financing statements, mortgages, notices, and other documents as the DIP Agent or the Prepetition Agent, as applicable may reasonably request to evidence, confirm, validate, or perfect, or to ensure the contemplated priority of, the DIP Liens or the Adequate Protection Liens granted pursuant hereto. The DIP Agent and the Prepetition Agent, in each of their sole discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file or record financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtor has real or personal property, and in such event, the recording officer shall be authorized to file or record such copy of this Interim Order.

8. **Adequate Protection**. The Prepetition Secured Parties shall receive the following as adequate protection against any Diminution in Value of such Prepetition Secured Party's interest in the Prepetition Collateral caused by the imposition of the automatic stay or the Debtor's use, sale, or disposition of the Prepetition Collateral during this Chapter 11 Case (collectively, the "**Adequate Protection Package**"):

(a) *Adequate Protection Liens for the Prepetition Secured Parties.* The Prepetition Agent, for the benefit of the Prepetition Secured Parties, is hereby granted, pursuant to sections 105, 361, 363(e), and 364(d)(1) of the Bankruptcy Code, continuing, valid, binding,

enforceable, and perfected post-petition security interests in and liens on the DIP Collateral (the "**Adequate Protection Liens**"). The Adequate Protection Liens shall be subject to the Carve Out and the Permitted Liens as set forth in this Interim Order and shall be (i) with respect to the Prepetition Collateral, junior to the DIP Liens and senior to the Prepetition Liens, and (ii) otherwise junior only to the DIP Liens. Notwithstanding anything to the contrary herein, the Prepetition Agent shall exercise commercially reasonable efforts to turn to the Prepetition Collateral first before exercising remedies against any other DIP Collateral.

(b) Except as provided herein or in the DIP Credit Agreement, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter arising in this Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in this Chapter 11 Case or any Successor Case or upon the dismissal of any of this Chapter 11 Case or any Successor Case. The Adequate Protection Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

(c) *Allowed Superpriority Claim of the Prepetition Secured Parties.* As further adequate protection of the interests of the Prepetition Secured Parties against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Secured Parties are hereby granted allowed super-priority administrative expense claims in this Chapter 11 Case and any Successor Case against the Debtor under sections 503 and 507(b) of the Bankruptcy Code (the "**507(b) Claim**").

(d) Subject to the relative priorities set forth in subparagraph (c) of this paragraph 8, the 507(b) Claim shall have priority over all other administrative expense claims and

unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order granting such relief), 507(a), 507(b), 546(c), 546(d), 552(b) (subject to entry of the Final Order granting such relief), 726, 1113, and 1114, and any other provision of the Bankruptcy Code; provided that the 507(b) Claim shall not be payable from the proceeds of Avoidance Actions or commercial tort claims pending entry of a Final Order granting such relief. The 507(b) Claim shall be subject to the Carve Out and the Permitted Liens as set forth in this Interim Order and shall be junior only to the DIP Superpriority Claims. Notwithstanding anything to the contrary herein, the Prepetition Agent shall exercise commercially reasonable efforts to satisfy the 507(b) Claim from the proceeds of the Prepetition Collateral first before turning to the proceeds of any other DIP Collateral.

(e) *Adequate Protection Payments.* As further adequate protection of the interests of the Prepetition Secured Parties, the Debtor shall make the following periodic adequate protection payments to the Prepetition Secured Parties in cash (without the need for the filing of a formal fee application where otherwise applicable or comply with U.S. Trustee fee guidelines) (the "**Adequate Protection Payments**"): to the Prepetition Secured Parties (such parties also being the DIP Secured Parties in this Chapter 11 Case), reasonable and documented legal fees and out-of-pocket expenses of the Prepetition Agent, Morrison & Foerster LLP, and local Delaware bankruptcy counsel Potter Anderson & Corroon LLP, in each case incurred or arising before, on, or after the Petition Date, in accordance with this Interim Order. A summary invoice for such fees and expenses shall be provided to the Debtor, the U.S. Trustee, and counsel for the Creditors' Committee (if any) (which may be via email) (collectively, the "**Fee Notice Parties**"). After

delivery of a summary invoice, the Fee Notice Parties shall have ten (10) calendar days to raise an objection thereto with respect to any of the fees, costs, and expenses incurred or arising on or after the Petition Date (the "**Fee Objection Period**"). Any objections raised by the Fee Notice Parties with respect to the Debtor's payment of such amounts must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional. If no objection is made by any of the Fee Notice Parties within the Fee Objection Period, then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtor, and in no event later than three (3) business days after expiration of the Fee Objection Period. If an objection is raised by any of the Fee Notice Parties within the Fee Objection Period, such objection shall be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtor, without further order of the Court following the expiration of the Fee Objection Period. Notwithstanding the foregoing, the Debtor is authorized and directed to pay within two (2) calendar days of the date of this Interim Order, the Adequate Protection Payments incurred on or prior to the date of this Interim Order without the need for any of the foregoing professionals to first deliver a summary invoice or other supporting documentation to the Fee Notice Parties (other than the Debtor). For the avoidance of doubt, any and all fees, costs, and expenses paid prior to the Petition Date by the Debtor to the foregoing professionals are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement, or any similar form of recovery by the Prepetition Secured Parties or any other person.

(f) *Payment of Certain Interest.* As further adequate protection of the interests of the Prepetition Secured Parties, the Debtor shall pay the Prepetition Secured Parties, in kind, an

amount equal to interest accruing upon the Prepetition Obligations at the default rate of interest as provided in and otherwise subject to the terms of the Prepetition Credit Documents in accordance with the Approved Budget.

(g) *Adequate Protection Reservation of Rights.* The receipt by the Prepetition Secured Parties of the Adequate Protection Package shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Notwithstanding any other provision hereof, the grant of the Adequate Protection Package to the Prepetition Secured Parties pursuant hereto is without prejudice to the rights of the Prepetition Secured Parties to seek modification of the grant of the Adequate Protection Package provided hereby so as to provide different or additional adequate protection and without prejudice to the right of the Debtor or any other party in interest to contest any such modification.

9. **Carve Out**.

(a) The rights and claims of the DIP Secured Parties, including the DIP Obligations, DIP Liens, and DIP Superpriority Claims, and the Prepetition Secured Parties, including the Prepetition Obligations, Adequate Protection Liens, and 507(b) Claim, shall be subject and subordinate in all respects to the payment of the Carve Out. As used in this Interim Order, "**Carve Out**" means the following expenses: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed $25,000 (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all (A) unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of Raymond James & Associates, Inc.)

(together, the "**Allowed Debtor Professional Fees**") incurred by persons or firms retained by the Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the "**Debtor Professionals**") and (B) unpaid fees and expenses (the "**Allowed Committee Professional Fees**" and together with the Allowed Debtor Professional Fees, collectively, the "**Allowed Professional Fees**") incurred by persons or firms retained by any statutory committees appointed in this Chapter 11 Case, including the Creditors' Committee (if appointed) (each, a "**Committee**") pursuant to section 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before or on the first calendar day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (these clauses (i) through (iii), the "**Pre-Carve Out Trigger Amounts**"); and (iv) Allowed Debtor Professional Fees not to exceed $300,000 and Allowed Committee Professional Fees not to exceed $50,000, incurred after the first calendar day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**," and together with the Pre-Carve Out Trigger Amounts, the "**Carve Out Amount**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtor, its restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below) and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) *Carve Out Funded Reserve*. For the period prior to the delivery of the Carve Out Trigger Notice, the Debtor shall fund from the DIP Facility or cash on hand into a segregated trust account (the "**Funded Reserve Account**") held by counsel for the Debtor for the benefit of Professional Persons the amounts set forth in the Approved Budget for Professional Persons. The Debtor shall use funds held in the Funded Reserve Account exclusively to pay Allowed Professional Fees and other obligations included within the Carve Out in accordance with the Approved Budget as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of the Court; provided that when all Allowed Professional Fees provided for in the Approved Budget that have funded into the Funded Reserve Account have been paid, any unused funds remaining in the Funded Reserve Account for those periods shall revert to the DIP Agent for the benefit of the DIP Lenders. Funds transferred to the Funded Reserve Account shall be subject to the DIP Liens and DIP Superpriority Claims granted hereunder solely to the extent of such reversionary interest; provided, that, for the avoidance of doubt, such liens and claims shall be subject in all respects to the Carve Out.

(c) *Carve Out Funding*. Notwithstanding anything in the DIP Credit Documents to the contrary, on the day on which a Carve Out Trigger Notice is validly delivered (the "**Carve Out Trigger Notice Date**"), the Carve Out Trigger Notice shall constitute a demand to the Debtor to utilize all cash on hand as of such date and any available cash thereafter held by the Debtor to fund the Funded Reserve Account an amount equal first to the then-unpaid amounts of the Allowed Professional Fees for the period prior to the Carve Out Trigger Notice Date and then the Post-Carve Out Trigger Notice Cap. All funds in the Funded Reserve Account shall be used to pay the Pre-Carve Out Trigger Amounts, but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to pay the obligations set forth in the

Post-Carve Out Trigger Notice Cap, and then, to the extent the Funded Reserve Account has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Obligations have been terminated, in which case any such excess shall be paid to the Debtor. Further, notwithstanding anything to the contrary in the Interim Order, disbursements by the Debtor from the Funded Reserve Account shall not constitute DIP Loans or increase or reduce the DIP Obligations.

(d) The failure of the Funded Reserve Account to satisfy in full the Allowed Professional Fees in full shall not affect the priority of the Carve Out, which shall be senior to all DIP Obligations and Prepetition Obligations; *provided* that, to the extent that the Funded Reserve Account is actually funded, the Carve Out shall be reduced by such funded amount dollar-for-dollar. In no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Funded Reserve Account, or any of the terms of the Interim Order be construed as a cap or limitation on the amount of the Allowed Debtor Professional Fees or the Allowed Committee Professional Fees (if any) due and payable by the Debtor or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise). Any payment or reimbursement made prior to the occurrence of the Carve Out Trigger Notice Date in respect of any Allowed Professional Fees shall not reduce the Post-Carve Out Trigger Notice Cap.

(e) None of the DIP Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with this Chapter 11 Case or any Successor Case. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Persons or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

10. **Limitation on Use of the DIP Facility, the DIP Collateral, and the Prepetition Collateral (Including Cash Collateral)**. Notwithstanding anything herein or in any other order of this Court to the contrary, the DIP Facility (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve Out), the DIP Collateral, the Prepetition Collateral, any Cash Collateral or the Carve Out (other than the Investigation Budget Cap (as defined below)) may not be used to (a) investigate, analyze, commence, prosecute, threaten, litigate, object to, contest or challenge in any manner or raise any defenses to the validity, perfection, priority, extent or enforceability of any amount due under the DIP Credit Documents, the Prepetition Credit Documents or the liens or claims granted under this Interim Order, the DIP Credit Documents or the Prepetition Credit Documents, including the Prepetition Liens and the DIP Liens, or any mortgage, security interest or lien with respect thereto, or any other rights or interests or replacement liens with respect thereto or any other rights or interests of any of the DIP Secured Parties or the Prepetition Secured Parties, (b) investigate, analyze, or assert any claims and defenses, including any Avoidance Actions, or any other causes of action against the DIP Secured Parties or the Prepetition Secured Parties or, in each case, their respective agents, affiliates, subsidiaries, directors, officers, employees, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agent's or the Prepetition Agent's assertion, enforcement or realization on the Prepetition Collateral or the DIP Collateral, in accordance with the DIP Credit Documents, the Prepetition Credit Documents, or this Interim Order, the exercise of rights by the DIP Secured Parties or the Prepetition Secured Parties once an Event of Default (as defined below) has occurred and is continuing or any other rights or interest of any of the DIP Secured Parties or the Prepetition Secured Parties following the occurrence of a DIP Termination Event and after the Remedies Notice Period (as defined below), (d) seek to subordinate (other than

to the Carve Out or as set forth in this Interim Order) or recharacterize the DIP Obligations or any of the Prepetition Obligations or to disallow or avoid any claim, mortgage, security interest, lien or replacement lien or payment thereunder, (e) seek to modify any of the rights granted to the DIP Secured Parties or any of the Prepetition Secured Parties hereunder or under the DIP Credit Documents or the Prepetition Credit Documents, in the case of each of the foregoing clauses (a) through (e), without such party's prior written consent, (f) pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of this Court or otherwise permitted under the DIP Credit Documents, or (g) pay Allowed Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, the Creditors' Committee (if any), in connection with any of the foregoing. The "**Investigation Budget Cap**" means a cap of $25,000 with respect to Allowed Professional Fees to be incurred by the Creditors' Committee (if any) under the investigation budget.

11. **Payment of Compensation**. Nothing herein shall be construed as consent to the allowance of any Allowed Professional Fees, or shall affect the rights of the DIP Lenders to object to the allowance and payment of such fees and expenses or to permit the Debtor to pay any such amounts not set forth in the Approved Budget. Further, nothing herein shall be construed to obligate the DIP Lenders to pay any professional fees or to assure that the Debtor has sufficient funds on hand to pay any professional fees.

12. **Effect of Stipulations**.

(a) *Generally*. The admissions, stipulations, agreements, releases, and waivers set forth in this Interim Order (collectively, the "**Prepetition Lien and Claim Stipulations**") are and shall be binding on the Debtor. In addition, the Prepetition Lien and Claim Stipulations shall be binding on any subsequent trustee, responsible person, examiner with expanded powers, any

other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Creditors' Committee (if appointed), unless, and solely to the extent that, (i) a party in interest with standing and requisite authority (other than the Debtor, as to which any Challenge (as defined below) is irrevocably waived and relinquished) has timely filed the appropriate pleadings and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 12) challenging the Prepetition Lien and Claim Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "**Challenge**") by no later than seventy-five (75) calendar days from the entry of this Interim Order (the "**Challenge Deadline**" and, such period, the "**Challenge Period**"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Secured Parties (without additional notice to or approval from this Court), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline; and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. Notwithstanding the foregoing, if a chapter 11 trustee is appointed or this Chapter 11 Case is converted to chapter 7 prior to the expiration of the Challenge Deadline, the chapter 11 trustee or chapter 7 trustee, as applicable, shall have until the later of the Challenge Deadline or the tenth (10th) day after the appointment of the chapter 11 trustee or the conversion of this Chapter 11 Case to chapter 7, as applicable, to commence a Challenge, subject to any further extension by order of the Court for cause. The timely filing of a motion seeking standing to file a Challenge before the termination of the Challenge Period shall toll the Challenge Deadline only as

to the party that timely filed such standing motion and only with respect to the specific Challenges identified in such standing motion until such motion is resolved or adjudicated by the Court. Any pleadings, including, but not limited to, the complaint, filed in any Challenge proceeding shall set forth with specificity the basis for such Challenge (and any Challenge not so specified prior to the Challenge Deadline shall be deemed forever waived, released and barred). The Court may fashion any appropriate remedy following a successful Challenge. For the avoidance of doubt, any trustee appointed or elected in this Chapter 11 Case shall, until the expiration of the Challenge Period, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph 12 (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor's estate), be deemed to be a party other than the Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtor in this Interim Order. For the avoidance of doubt, as to the Debtor, upon entry of this Interim Order, all Challenges, and any right to assert any Challenge, are hereby irrevocably waived and relinquished as of the Petition Date, and the Debtor's Stipulations shall be binding in all respects on the Debtor irrespective of the filing of any Challenge.

(b) *Binding Effect*. To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Stipulations, then, without further notice, motion, or application to, order of, or hearing before this Court and without the need or requirement to file any proof of claim, (x) the obligations in respect of the Prepetition Credit Documents shall constitute allowed claims, not subject to any claims and defenses (whether characterized as a counterclaim, setoff, subordination,

recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law), for all purposes in this Chapter 11 Case and any Successor Case; (y) the Prepetition Liens shall not be subject to any other or further Challenge, including, without limitation, any claims and defenses, which shall be deemed to be forever waived and barred, and all parties in interest shall be enjoined from seeking to exercise the rights of the Debtor's estate, including any successor thereto (including any estate representative or a trustee, whether such trustee is appointed or elected prior to or following the expiration of the Challenge Period); and (z) the Prepetition Lien and Claim Stipulations shall, pursuant to this Interim Order, be of full force and effect and forever binding upon the applicable Debtor's estate and all creditors, interest holders and other parties in interest, including a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtor's estate, in this Chapter 11 Case and any Successor Case.

(c) Notwithstanding anything to the contrary herein, if any such Challenge proceeding is properly and timely commenced, the Prepetition Lien and Claim Stipulations shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (b) above, except to the extent that any of such Prepetition Lien and Claim Stipulations is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (b) above. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition Credit Documents in defending

themselves in any such proceeding as adequate protection, except if a Challenge results in a determination that the entirety of the Prepetition Liens are invalid. Nothing in this Interim Order vests or confers on any person, including the Creditors' Committee (if any), standing or authority to pursue any cause of action belonging to the Debtor or its estate, including, without limitation, Challenges with respect to the Prepetition Lien and Claim Stipulations, and all rights to object to such standing are expressly reserved.

13. **Approved Budget**. Attached to this Interim Order as **Exhibit B** is a 13-week budget approved by the DIP Agent, which sets forth, among other things, projected cash receipts and cash disbursements. Such budget shall be updated from time to time as set forth in the DIP Credit Agreement. The Debtor shall at all times comply with the Approved Budget (subject to the Permitted Variances) and shall further comply with the other reporting requirements set forth in the DIP Credit Agreement. As of any date of determination, the budget or the updated budget that has most recently become the "Approved Budget" in accordance with and as defined in the DIP Credit Agreement shall be referred to herein as the "Approved Budget." Until any updated budget has become the Approved Budget, the Debtor shall be subject to and be governed by the terms of the Approved Budget then in effect (subject to Permitted Variances). "**Permitted Variance**" means, with respect to the Approved Budget, tested on a four (4)-week rolling basis, cumulative actual expenses for the most recently completed week to be not more than 115% of cumulative budgeted expenses for the period ending with the most recently completed week; *provided* that if for any four (4)-week rolling period, actual cash expenditures exceed expected cash expenditures, the Permitted Variance for cash expenditures for such testing period will be deemed to have been met if the cumulative actual net cash flow for such period is equal to or greater than the cumulative expected net cash flow for such period. For the avoidance of doubt, documented fees and out-of-

pocket expenses paid to the DIP Secured Parties or their respective professionals shall not be included in the foregoing variance testing; *provided*, *however*, documented fees and out-of-pocket expenses paid to the Debtor's professionals or any professionals retained by any Committee formed during this Chapter 11 Case shall be included in the foregoing variance testing.

14. **Section 506(c) Claims**. Upon entry of the Final Order, no costs or expenses of administration that have been or may be incurred in this Chapter 11 Case or any Successor Case at any time may be charged against the DIP Secured Parties or the Prepetition Secured Parties, or any of their respective claims, or the DIP Collateral or Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent or Prepetition Agent, as applicable. Nothing contained in this Interim Order shall be deemed a consent by the DIP Agent or the Prepetition Agent, as applicable, to any charge, lien, assessment, or claim against the DIP Collateral or Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise, and no consent shall be implied from any action, inaction, or acquiescence by the DIP Secured Parties or Prepetition Secured Parties, as applicable.

15. **Collateral Rights**. Unless the DIP Agent has provided its prior written consent or all DIP Obligations have been paid in full in cash (or will be paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below) and all commitments to lend have terminated:

(a) The Debtor shall not seek entry, in this Chapter 11 Case, or in any Successor Case, of any order that authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status that is senior or *pari passu* to those

granted to the DIP Agent, respectively, pursuant to this Interim Order, unless such credit or indebtedness is sufficient to pay all of the DIP Obligations in full in cash; and

(b) The Debtor shall not consent to relief from the automatic stay by any persons other than the DIP Agent to proceed against any DIP Collateral having a fair market value in excess of $25,000 without the express written consent of the DIP Agent.

16. **Termination Events**. Subject to any obligations under the Carve Out and any applicable grace period under the DIP Credit Documents and this Interim Order and the Remedies Notice Period, (i) the DIP Obligations shall accelerate and become immediately due and payable in full, and (ii) the Debtor's right to use Cash Collateral shall immediately cease, in each case without further notice or action by the Court following the earliest to occur of any of the following unless waived in writing by the DIP Agent or the Prepetition Agent, as applicable (each a "**Termination Event**"): (i) the occurrence of any Event of Default (as defined below); (ii) the Debtor's failure to comply with any provision of this Interim Order (including, without limitation, the Approved Budget (and the Permitted Variances) and the Milestones occurring during the term of this Interim Order); (iii) except as set forth below, the occurrence of the Maturity Date (as defined in the DIP Credit Agreement); (iv) the entry of an order authorizing the use of DIP Collateral or Cash Collateral or financing under Bankruptcy Code section 364 or the filing by the Debtor of a motion seeking such authority, in each case without the consent of the DIP Agent or the Prepetition Agent, as applicable; (v) dismissal or conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (vi) termination, modification, or reversal of this Interim Order without the consent of the DIP Agent or the Prepetition Agent, as applicable; and (vii) the filing of a plan or disclosure statement that is not approved by the DIP Agent or Prepetition Agent, as applicable. Notwithstanding the foregoing, subject to paragraph 19 below, the Debtor's

authority to use Cash Collateral shall continue following the repayment of the DIP Obligations in full if the Prepetition Agent consents to a form of Approved Budget for such period.

17. **Disposition of Collateral**. It shall be an Event of Default for the Debtor to sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral outside the ordinary course of business, without the prior written consent of the DIP Agent (and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent or an order of this Court), except as provided in the DIP Credit Agreement and this Interim Order.

18. **Events of Default**. The occurrence of an "Event of Default" or "Default" under the DIP Credit Agreement shall constitute an event of default under this Interim Order, unless expressly waived in writing by the DIP Agent, and such Events of Default or Defaults are explicitly incorporated by reference into this Interim Order (collectively, the "**Events of Default**"). The failure of the Debtor to satisfy a Milestone (as defined in and set forth in Schedule 8.22 to the DIP Credit Agreement) occurring during the term of this Interim Order (each, a "**Bankruptcy Milestone**"), shall constitute an Event of Default.

19. **Rights and Remedies Upon a Termination Event**.

(a) The Debtor shall promptly provide notice to counsel to the DIP Secured Parties, the U.S. Trustee, and counsel to the Creditors' Committee (if any) of the occurrence of any Termination Event. Upon the occurrence and during the continuation of a Termination Event (regardless of whether the Debtor has given the notice described in the previous sentence), and following the giving of not less than five (5) business days' prior written notice of such occurrence by the DIP Agent, which may be via email, to the Debtor and its counsel, counsel for the Creditors' Committee, if any, and the U.S. Trustee (such notice, the "**Remedies Notice**," and such period, the "**Remedies Notice Period**"), (i) the DIP Secured Parties shall be entitled to exercise any of

their rights and remedies against the DIP Collateral available to them under this Interim Order, the DIP Credit Documents, and applicable non-bankruptcy law in accordance with the DIP Credit Documents, subject to the Carve-Out; (ii) the Prepetition Secured Parties may exercise any rights and remedies to satisfy the Prepetition Obligations and obligations with respect to the Adequate Protection Package, subject to the DIP Obligations, the DIP Superpriority Claims, the Permitted Liens, and the Carve Out, in accordance with the Prepetition Credit Documents; and (iii) any obligation otherwise imposed on the DIP Secured Parties to provide any loan or advance to the Debtor pursuant to the DIP Credit Documents shall immediately be terminated. During the Remedies Notice Period, the Debtor shall continue to have the right to use Cash Collateral in accordance with the terms of this Interim Order, solely to fund the Carve Out and pay necessary expenses to avoid immediate and irreparable harm to the Debtor's estate (subject to the Approved Budget and the Permitted Variances), or as otherwise agreed to in writing by the DIP Agent or the Prepetition Agent, as applicable. Nothing in this Interim Order shall limit the ability of any party to immediately exercise rights and remedies with respect any non-Debtor.

(b) Notwithstanding the immediately preceding subparagraph, immediately following the giving of notice by the DIP Agent of the occurrence of a DIP Termination Event, and subject to the full funding of the Carve Out: (i) the Debtor shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lenders as provided in the DIP Credit Agreement and this Interim Order, and (ii) the DIP Lenders shall continue to apply such proceeds in accordance with the provisions of this Interim Order and of the DIP Credit Agreement. During the Remedies Notice Period, the Debtor and/or any other party in interest shall be entitled to seek an emergency hearing to consider (x) whether a DIP Termination Event has occurred and (y) any other appropriate relief. Notwithstanding the foregoing and for the avoidance

of doubt, upon the expiration of the Remedies Notice Period, unless this Court has entered an order to the contrary, the Debtor's right to use Cash Collateral and the proceeds of the DIP Loans shall immediately cease, and the Prepetition Secured Parties and the DIP Secured Parties shall have the rights set forth in paragraph (a) immediately above, without the necessity of seeking relief from the automatic stay or further notice or order.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the DIP Secured Parties' rights to seek any other or supplemental relief in respect of the DIP Secured Parties, as provided in the DIP Credit Agreement or the other DIP Credit Documents.

20. **Payments Free and Clear**. Any and all payments or proceeds remitted to the DIP Secured Parties or Prepetition Secured Parties (subject to the reservation of rights in paragraph 12 hereof) pursuant to the provisions of this Interim Order, the DIP Credit Documents or any subsequent order of the Court shall be irrevocably received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, Bankruptcy Code sections 506(c) (subject to a Final Order granting such relief) or 552(b) (subject to a Final Order granting such relief), whether asserted or assessed by, through or on behalf of the Debtor.

21. **Indemnification**. The Debtor shall indemnify and hold harmless the DIP Agent, the DIP Lenders, and each of their respective affiliates and each of their respective officers, directors, employees, agents, advisors, attorneys and representatives (collectively, the "**Indemnified Parties**"), from and against all reasonable and documented out-of-pocket costs, expenses, liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility, and such other liabilities as set forth in, in accordance with and subject to the limitations of the DIP Credit

Documents and the Approved Budget; *provided* that no Indemnified Parties will be indemnified for any losses, claims, damages, liabilities or related expenses to the extent determined by a final, nonappealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the gross negligence, willful misconduct, or fraud of such Indemnified Parties.

22. **Proofs of Claim**. Neither the DIP Agent nor the DIP Lenders will be required to file proofs of claim in this Chapter 11 Case or any Successor Case in order to assert claims arising under the DIP Credit Documents. Neither the Prepetition Agent nor the Prepetition Lenders shall be required to file proofs of claim in this Chapter 11 Case or any Successor Case in order to assert claims on behalf of themselves or the Prepetition Secured Parties on account of the obligations arising under the Prepetition Credit Documents, including, without limitation, any principal, unpaid interest, fees, expenses, and other amounts under the Prepetition Credit Documents; *provided*, however, the Prepetition Agent is permitted (but shall not be required) to file one master proof of claim in this Chapter 11 Case on account of the obligations arising under the Prepetition Credit Documents, as applicable.

23. **Other Rights and Obligations**.

(a) *Good Faith Under Section 364(e) of the Bankruptcy Code. No Modification or Stay of this Interim Order*. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, amended, or vacated by a subsequent order of this or any other Court, the DIP Agent and the DIP Lenders are entitled to all the benefits and protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment, or vacatur shall not affect the validity and enforceability of any advances made pursuant to this Interim Order or the liens or priority

authorized or created hereby. Any claims, liens, or DIP Protections granted to the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of such reversal, modification, amendment, or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties shall be entitled to all of the rights, remedies, privileges, and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Credit Agreement are made in reliance on this Interim Order, the obligations owed to the DIP Secured Parties prior to the effective date of any reversal or modification of this Interim Order cannot, as a result of any subsequent order in this Chapter 11 Case or in any Successor Case, be subordinated, lose their lien priority or super-priority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Secured Parties under this Interim Order and/or the DIP Credit Documents.

(b) *Binding Effect*. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties, the Debtor, and each of their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) whether in this Chapter 11 Case, in any Successor Case, or upon dismissal of any such chapter 11 or chapter 7 case.

(c) *No Waiver*. The failure of the DIP Secured Parties to seek relief or otherwise exercise their rights and remedies under the DIP Credit Documents, the DIP Facility, this Interim Order, or otherwise, as applicable, shall not constitute a waiver of the DIP Secured Parties' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or

implicitly, or otherwise impair the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Secured Parties to (i) request conversion of this Chapter 11 Case to a case under chapter 7, dismissal of this Chapter 11 Case, or the appointment of a trustee in this Chapter 11 Case; (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization; or (iii) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) the DIP Secured Parties may have pursuant to this Interim Order, the DIP Credit Documents, or applicable law. Nothing in this Interim Order shall interfere with the rights of any party with respect to any non-Debtor.

(d) *No Third-Party Rights*. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

(e) *No Marshaling*. Subject to entry of the Final Order granting such relief, the DIP Secured Parties and Prepetition Secured Parties, as applicable, shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral and Prepetition Collateral, as applicable.

(f) *Section 552(b)*. In light of the DIP Secured Parties' agreement to subordinate their liens and super-priority claims to the Carve Out and the Prepetition Secured Parties' consent to use of Cash Collateral, and subject to entry of the Final Order granting such relief, the DIP Secured Parties and the Prepetition Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply with respect to proceeds, product, offspring, or profits of any of the DIP Collateral or Prepetition Collateral, as applicable.

(g) *Amendment*. The Debtor and the DIP Agent may from time to time amend, restate, amend and restate, modify, waive, or supplement any provision of the DIP Credit Documents, without further order of this Court if such amendment, restatement, amendment and restatement, modification, waiver, or supplement is not material or is necessary to conform the terms of the DIP Credit Documents; *provided* that notice of the foregoing shall be provided to the U.S. Trustee and the Creditors' Committee (if any). Any material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Credit Documents (as determined by the DIP Agent in its reasonable discretion) must be on notice to the U.S. Trustee and the Creditors' Committee (if any), who shall have five (5) business days from the date of such notice within which to object in writing to such amendment, restatement, amendment and restatement, modification, waiver, or supplement. If the U.S. Trustee or the Creditors' Committee (if any) timely objects to any such amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Credit Documents, such amendment, restatement, amendment and restatement, modification, waiver, or supplement shall only be permitted pursuant to an order of this Court (which the Debtor, the DIP Agent, and the Prepetition Agent agree may be on shortened notice). For the avoidance of doubt, the waiver or extension of a Bankruptcy Milestone or the delivery of an Updated Budget (as defined in the DIP Credit Agreement) shall not constitute a material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Credit Documents.

(h) *Credit Bidding*. In connection with any sale process authorized by the Court, (i) the DIP Agent (or its assignee, as applicable) may credit bid (each a "**Credit Bid**") up to the full amount of the applicable outstanding DIP Obligations, in each case including any accrued interest and expenses, as provided for in section 363(k) of the Bankruptcy Code in any

sale of any DIP Collateral, and (ii) the Prepetition Agent (or its assignee, as applicable) may Credit Bid up to the full amount of its outstanding Prepetition Obligations, including any accrued interest and expenses, as provided for in section 363(k) of the Bankruptcy Code in any sale of any Prepetition Collateral, in each case, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, in each case, without further order from this Court authorizing the same. For the avoidance of doubt, the DIP Roll-Up Loans and the Prepetition Obligations shall remain subject to the reservation of rights in paragraph 12 hereof notwithstanding any credit bid of the DIP Roll-Up Loans or the Prepetition Obligations.

(i) *No Subrogation*. In no event shall any person or entity who pays (or through the extension of credit to the Debtor, causes to be paid) any of the DIP Loans be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted in favor of, or conferred upon, the DIP Secured Parties by the terms of this Interim Order, the other DIP Credit Documents, or otherwise at law or contract or in equity, unless and until such time as all of the DIP Loans have been indefeasibly paid in full in cash on a final basis and all lending commitments have been terminated under the DIP Facility and the DIP Secured Parties have received a full release in connection therewith.

(j) *Rights Preserved*. Other than as expressly set forth in this Interim Order, any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Secured Parties and the Prepetition Secured Parties are preserved.

24. **Releases**. Subject to the rights and limitations set forth in paragraph 12 with respect to the DIP Roll-Up Loans and the Prepetition Secured Parties in their capacities as such, the Debtor, for itself and its successors, assigns, parents, subsidiaries, affiliates, predecessors,

employees, agents, heirs and executors, as applicable, hereby fully and unconditionally releases the DIP Secured Parties, the Prepetition Secured Parties, each solely in their capacity as such, and each of their respective directors, officers, employees, subsidiaries, affiliates, attorneys, financial advisors, investment bankers, agents, representatives, successors and assigns (collectively, the "**Released Parties**") from any and all claims, causes of action, costs or demands of whatever kind or nature, whether known or unknown, liquidated or unliquidated, fixed or contingent, asserted or unasserted, foreseen or unforeseen, or matured or unmatured, which the Debtor may have had against the Released Parties by reason of any act or omission on the part of the Released Parties occurring prior to the date hereof, in each case regarding or relating to the DIP Credit Agreement, the DIP Facility, the DIP Credit Documents or any document or instrument relating thereto, the Prepetition Credit Agreement, the Prepetition Credit Documents, or any document or instrument relating thereto (collectively, the "**Released Matters**"); *provided*, that Released Matters shall not include (a) any obligations of the DIP Secured Parties under the DIP Credit Documents or this Interim Order and (b) any claims, causes of action, costs or demands of whatever kind or nature, whether known or unknown, liquidated or unliquidated, fixed or contingent, asserted or unasserted, foreseen or unforeseen, or matured or unmatured, resulting solely from the gross negligence or willful misconduct or fraud of the Released Parties, as determined by a court of competent jurisdiction in a final and non-appealable judgment or order.

25. **Loss or Damage to Collateral**. Nothing in this Interim Order, the DIP Credit Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtor in the operation of its business, or in connection with its restructuring efforts. So

long as the DIP Secured Parties and the Prepetition Secured Parties comply with their obligations under the DIP Credit Documents and this Interim Order and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Secured Parties and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Debtor.

26. **Insurance**. To the extent that any of the Prepetition Secured Parties is listed as additional insured and/or loss payee under the Borrower's or Guarantors' (each as defined in the DIP Credit Agreement) insurance policies, the DIP Secured Parties are deemed to be the additional insureds and/or loss payees under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, in each case, subject to the Carve Out, first, to the payment in full of the DIP Obligations and second, subject to paragraph 12 hereof, to the payment of the obligations arising under the Prepetition Credit Documents.

27. **Modification of the Automatic Stay**. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtor to grant the DIP Liens, the Adequate Protection Liens, the DIP Superpriority Claim, and the 507(b) Claim; (b) permit the Debtor to incur all liabilities and obligations under the DIP Credit Documents; (c) permit the Debtor and the DIP Secured Parties to perform such other acts as are necessary to effectuate the terms of this Interim Order; (d) authorize the Debtor to pay the Prepetition Secured

Parties (subject to paragraph 12 hereof) and the DIP Secured Parties in accordance with the terms of this Interim Order; and (e) permit the DIP Secured Parties and the Prepetition Secured Parties (subject to paragraph 12 hereof), subject to the Remedies Notice Period, to take any action and exercise all rights and remedies provided to them by this Interim Order, the DIP Credit Documents, the Prepetition Credit Documents, or applicable law.

28. **Cooperation**. All Prepetition Secured Parties shall cooperate with the DIP Agent in its efforts to enforce its liens and security interests in the DIP Collateral. Such lenders shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect the DIP Agent from enforcing its rights or remedies in the DIP Collateral.

29. **Proceeds of Subsequent Financing**. Subject to entry of the Final Order, if the Debtor, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in this Chapter 11 Case or any Successor Case shall obtain credit or incur debt pursuant to sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the DIP Credit Documents and this Interim Order at any time prior to (a) the indefeasible repayment in full in cash of all Prepetition Obligations and DIP Obligations and (b) the termination of the DIP Lenders' obligations to extend credit under the DIP Facility, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied to the DIP Obligations owing to the DIP Secured Parties and, thereafter, to the extent remaining, to the Prepetition Agent to be applied to the Prepetition Obligations (subject to paragraph 12 hereof).

30. **Survival of Interim Order and Other Matters**. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order that may be entered (i) confirming any chapter 11 plan in this Chapter 11 Case; (ii) converting this Chapter 11 Case to

a case under chapter 7 of the Bankruptcy Code or any Successor Case; (iii) to the extent authorized by applicable law, dismissing this Chapter 11 Case; (iv) withdrawing the reference of this Chapter 11 Case from this Court; or (v) providing for abstention from handling or retaining of jurisdiction of this Chapter 11 Case in this Court. The terms and provisions of this Interim Order, including the DIP Protections granted pursuant to this Interim Order and the DIP Credit Documents, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Interim Order until all the obligations of the Debtor to the DIP Secured Parties pursuant to the DIP Credit Documents have been indefeasibly paid in full in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Credit Documents that survive such discharge by their terms). The rights of all parties to object to the entry of a Final DIP Order are fully reserved.

(a) *Inconsistency*. In the event of any inconsistency between the terms and conditions of the DIP Credit Documents, the DIP Motion, or this Interim Order, the provisions of this Interim Order shall govern and control.

(b) *Enforceability*. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Interim Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order. The rights of all parties in interest to object to the terms of the Final Order, the DIP Credit Agreement, and any other DIP Credit Document at the Final Hearing are expressly reserved.

(c) *Objections Overruled*. All objections to the DIP Motion to the extent not withdrawn or resolved are hereby overruled on an interim basis.

(d) *No Waivers or Modification of Interim Order*. The Debtor irrevocably waives any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Secured Parties or the Prepetition Secured Parties.

(e) *Necessary Action*. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order and the transactions contemplated hereby.

31. **Subordination Agreements**. Nothing contained in this Interim Order shall alter or modify, or be deemed to alter or modify, the rights of any party under (a) that certain Amended and Restated Subordination Agreement, dated as of December 29, 2023, among the Debtor, the Prepetition Agent, and each noteholder party thereto (the "**December 2023 Subordination Agreement**"); (b) that certain Junior Lender Subordination Agreement, dated as of March 20, 2024, among the Debtor and each noteholder party thereto (the "**Junior Lender Subordination Agreement**"); and (c) that certain Senior Lender Subordination Agreement, dated as of March 20, 2024, among the Debtor, the Prepetition Agent, and each noteholder party thereto (the "**Senior Lender Subordination Agreement**," and together with the December 2023 Subordination Agreement and the Junior Lender Subordination Agreement, the "**Subordination Agreements**").

32. **Conditions Precedent**. Except as provided for in the Carve Out, no DIP Lender shall have any obligation to make any DIP Loan under the respective DIP Credit Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP

Credit Documents have been satisfied in full or waived in accordance with such DIP Credit Documents.

33. **Rights Preserved**. Nothing in this Interim Order shall be deemed to waive or otherwise impair the Debtor's or DIP Lenders' rights to seek at any future hearing any of the relief set forth in the DIP Motion or otherwise available to them under the Bankruptcy Code in connection with any of the DIP Loans, including but not limited to, any relief that may be available to them under Bankruptcy Code sections 361 or 364.

34. **Final Hearing**.

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for **June 3, 2025, at 2:00 p.m. prevailing Eastern time** at the United States Bankruptcy Court for the District of Delaware. Any party in interest objecting to the relief sought at the Final Hearing shall file a written objection no later than **May 27, 2025, at 4:00 p.m. prevailing Eastern time**, which objections shall be served so that the same are received on or before such date by: (i) proposed counsel for the Debtor, (a) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn.: Debra Grassgreen (dgrassgreen@pszjlaw.com), James E. O'Neill (joneill@pszjlaw.com), and Maxim Litvak (mlitvak@pszjlaw.com); (ii) counsel for the DIP Secured Parties, (a) Morrison & Foerster LLP, 250 West 55th Street, Floor 20, New York, NY 10019, Attn: James A. Newton, Esq. (jnewton@mofo.com) and Miranda K. Russell, Esq. (mrussell@mofo.com), and (b) Potter Anderson & Corroon LLP, Attn: Christopher M. Samis (csamis@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com); (iii) proposed counsel to the Creditors' Committee, if any; and (iv) the U.S. Trustee, Attn: Megan Seliber (megan.seliber@usdoj.gov), and shall be filed with the Clerk of the Court, in each case to allow actual receipt of the foregoing

no later than **May 27, 2025, at 4:00 p.m. prevailing Eastern time**. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtor and entered by this Court.

(b) The Debtor shall promptly serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing and to any party that has filed a request for notices with this Court and any other party required to be served by the Rules.

(c) Notwithstanding the terms of this Interim Order, this Court is not precluded from entering a Final Order containing provisions that are inconsistent with, or contrary to, any of the terms in this Interim Order, subject to the protections under section 364(e) and the rights of the DIP Secured Parties to terminate the DIP Credit Agreement if such Final Order is not acceptable to them. In the event this Court modifies any of the provisions of this Interim Order or the DIP Credit Documents following such further hearing, such modifications shall not affect the rights and priorities of DIP Secured Parties pursuant to this Interim Order with respect to the DIP Collateral, and any portion of the DIP Obligations that arises or is incurred, advanced, or paid prior to such modifications (or otherwise arising prior to such modifications), and this Interim Order shall remain in full force and effect except as specifically amended or modified at such Final Hearing.

35. **Effect of this Interim Order**. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and, notwithstanding Bankruptcy Rules 6003 and 6004 or any other Bankruptcy Rule, shall take effect and be enforceable as of the Petition

Date immediately upon execution thereof, and there shall be no stay of execution or effectiveness of this Interim Order.

36. **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: May 9th, 2025
Wilmington, Delaware

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

DIP Credit Agreement

Execution Version

SENIOR SECURED DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT

dated as of

May 5, 2025

by and among

SYNTHEGO CORPORATION,
as the Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

as the Lenders,

and

PERCEPTIVE CREDIT HOLDINGS III, LP
as the Administrative Agent

U.S. $50,000,000

TABLE OF CONTENTS

Page

SECTION 1 DEFINITIONS 1
1.01 Certain Defined Terms 1
1.02 Accounting Terms and Principles 30
1.03 Interpretation 30
1.04 Divisions 31
1.05 Reference Rate Replacement 32
1.06 Rates 32
SECTION 2 THE COMMITMENTS AND THE LOANS 32
2.01 New Money Loans 32
2.02 Borrowing Procedures 33
2.03 Roll-Up Loans 33
2.04 Notes 33
2.05 Use of Proceeds 33
SECTION 3 PAYMENTS OF PRINCIPAL AND INTEREST 34
3.01 Repayments and Prepayments Generally; Application 34
3.02 Interest 34
3.03 Prepayments; Prepayment Premium 35
3.04 Closing Fee 36
3.05 Exit Fee 36
SECTION 4 PAYMENTS, ETC. 37
4.01 Payments 37
4.02 Computations 37
4.03 Set-Off 37
SECTION 5 YIELD PROTECTION, ETC. 38
5.01 Additional Costs 38
5.02 Illegality 40
5.03 Taxes 40
SECTION 6 CONDITIONS PRECEDENT 44
6.01 Conditions to the Borrowing of the Initial Loan 44

TABLE OF CONTENTS
(continued)

Page

6.02 Conditions to Borrowing of any Delayed Draw Loans on a Delayed Draw Borrowing Date 47
SECTION 7 REPRESENTATIONS AND WARRANTIES 48
7.01 Power and Authority 48
7.02 Authorization; Enforceability 49
7.03 Governmental and Other Approvals; No Conflicts 49
7.04 Financial Statements; Material Adverse Change 49
7.05 Properties 50
7.06 No Actions or Proceedings 53
7.07 Compliance with Laws and Agreements 54
7.08 Taxes 55
7.09 Full Disclosure 55
7.10 Investment Company Act and Margin Stock Regulation 55
7.11 [Reserved]. 55
7.12 Equity Holders, Subsidiaries and Other Investments 55
7.13 Indebtedness and Liens 56
7.14 Material Agreements 56
7.15 Restrictive Agreements 56
7.16 Real Property 56
7.17 Pension Matters 56
7.18 Priority of Obligations; Collateral; Security Interest 57
7.19 Governmental Approvals 58
7.20 Transactions with Affiliates 59
7.21 Sanctions 59
7.22 Anti-Corruption 59
7.23 Deposit and Disbursement Accounts 60
7.24 Royalties and Other Payments 60
7.25 Non-Competes 60
7.26 [Reserved]. 60
7.27 Initial Budget 60

TABLE OF CONTENTS
(continued)

Page

7.28 Bankruptcy Matters 60
SECTION 8 AFFIRMATIVE COVENANTS 61
8.01 Financial Statements and Other Information 61
8.02 Notices of Material Events 63
8.03 Existence; Conduct of Business 65
8.04 Payment of Obligations 65
8.05 Insurance 65
8.06 Books and Records; Inspection Rights 66
8.07 Compliance with Laws and Other Obligations 66
8.08 Maintenance of Properties, Etc 66
8.09 Government Approvals, Etc 66
8.10 Action under Environmental Laws 67
8.11 Use of Proceeds 67
8.12 Certain Obligations Respecting Subsidiaries; Further Assurances 67
8.13 Termination of Non-Permitted Liens 68
8.14 Intellectual Property 68
8.15 Maintenance of Governmental Approvals, Contracts, Intellectual Property, Etc 68
8.16 ERISA and Foreign Pension Plan Compliance 69
8.17 Cash Management 69
8.18 Litigation Cooperation 69
8.19 Conference Calls 69
8.20 Information Rights 70
8.21 First and Second Day Orders 70
8.22 Certain Case Milestones 70
8.23 Budget 70
SECTION 9 NEGATIVE COVENANTS 70
9.01 Indebtedness 70
9.02 Liens 72
9.03 Fundamental Changes, Acquisitions, Etc 73

TABLE OF CONTENTS
(continued)

Page

9.04 Lines of Business 73
9.05 Investments 73
9.06 Restricted Payments 74
9.07 Payments of Indebtedness 74
9.08 Change in Fiscal Year 74
9.09 Sales of Assets, Etc 74
9.10 Transactions with Affiliates 75
9.11 Restrictive Agreements 76
9.12 Modifications of Organic Documents 76
9.13 Sales and Leasebacks 77
9.14 Hazardous Material 77
9.15 Accounting Changes 77
9.16 Compliance with ERISA 77
9.17 Inconsistent Agreements 77
9.18 Sanctions; Anti-Corruption Use of Proceeds 77
9.19 Inbound and Outbound Licenses 78
9.20 Carve-Out 78
9.21 No Subsidiaries 78
SECTION 10 [RESERVED] 78
SECTION 11 EVENTS OF DEFAULT 78
11.01 Events of Default 78
11.02 Remedies 82
11.03 Additional Remedies 82
SECTION 12 THE ADMINISTRATIVE AGENT 83
12.01 Appointment and Duties 83
12.02 Binding Effect 84
12.03 Use of Discretion 84
12.04 Delegation of Rights and Duties 84
12.05 Reliance and Liability 85
12.06 Administrative Agent Individually 86

TABLE OF CONTENTS
(continued)

Page

12.07 Lender Credit Decision 86
12.08 Expenses; Indemnities 86
12.09 Resignation of the Administrative Agent 87
12.10 Release of Collateral or Guarantors 87
12.11 Additional Secured Parties 88
SECTION 13 [RESERVED] 88
SECTION 14 MISCELLANEOUS 88
14.01 No Waiver 88
14.02 Notices 88
14.03 Expenses, Indemnification, Etc. 89
14.04 Amendments, Etc. 90
14.05 Successors and Assigns 91
14.06 Survival 93
14.07 Captions 93
14.08 Counterparts 93
14.09 Governing Law 94
14.10 Jurisdiction, Service of Process and Venue 94
14.11 Waiver of Jury Trial 94
14.12 Waiver of Immunity 94
14.13 Entire Agreement 95
14.14 Severability 95
14.15 No Fiduciary Relationship 95
14.16 Confidentiality 95
14.17 Interest Rate Limitation 96
14.18 Exit Fee 96
14.19 Judgment Currency 96
14.20 USA PATRIOT Act 97
14.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions 97
14.22 Credit Bidding 97

TABLE OF CONTENTS
(continued)

SCHEDULES AND EXHIBITS

Schedule 1	-	Commitments
Schedule 7.05(b)(i)	-	Specified Material Intellectual Property
Schedule 7.05(b)(ii)	-	Excluded Specified Intellectual Property
Schedule 7.05(b)(iii)	-	Excluded Specified Intellectual Property (Patents)
Schedule 7.06(a)	-	Certain Litigation
Schedule 7.06(c)	-	Labor Matters
Schedule 7.07(e)	-	Material Violation of Healthcare Law
Schedule 7.08	-	Taxes
Schedule 7.12(a)	-	Holders of Equity Interests of the Borrower
Schedule 7.13(a)	-	Existing Indebtedness of the Borrower and each of its Subsidiaries
Schedule 7.13(b)	-	Existing Liens of the Borrower and each of their Subsidiaries
Schedule 7.14	-	Material Agreements of Obligors
Schedule 7.15	-	Restrictive Agreements
Schedule 7.16	-	Real Property Owned or Leased by the Borrower or any Subsidiary
Schedule 7.17	-	Pension Matters
Schedule 7.20	-	Transactions with Affiliates
Schedule 7.23	-	Deposit, Disbursement and Investment Accounts
Schedule 7.24	-	Royalties and Other Payments
Schedule 8.22	-	Case Milestones
Schedule 9.05	-	Permitted Investments
Schedule 9.13	-	Permitted Sales and Leasebacks
Schedule 9.19(a)	-	Inbound Licenses
Schedule 9.19(b)	-	Outbound Licenses

Exhibit A	-	Form of Note
Exhibit B	-	Form of Borrowing Notice
Exhibit C	-	[Reserved]
Exhibit D-1	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit D-2	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit D-3	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit D-4	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E	-	[Reserved]
Exhibit F	-	Form of Assignment and Assumption

TABLE OF CONTENTS
(continued)

Exhibit G	-	[Reserved]
Exhibit H	-	[Reserved]

CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of May 5, 2025 (this "***Agreement***"), by and among Synthego Corporation, a Delaware corporation (the "***Borrower***"), Perceptive Credit Holdings III, LP (the "***Closing Date Lender***") and each other lender that may from time to time become a party hereto (each, including the Closing Date Lender, a "***Lender***" and collectively, the "***Lenders***"), and Perceptive Credit Holdings III, LP, as administrative agent for the Lenders (in such capacity, the "***Administrative Agent***").

WITNESSETH:

WHEREAS, on May 5, 2025 (the "***Petition Date***"), the Borrower (in its capacity as debtor under the Case, the "***Debtor***") filed a voluntary petition with the Bankruptcy Court initiating the case that is pending under Chapter 11 of the Bankruptcy Code (the "***Case***") and has continued in the possession of its assets and in the management of its businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Borrower has requested that the Lenders extend to the Borrower a debtor-in-possession, superpriority, senior secured term loan credit facility (the "***DIP Facility***") denominated in U.S. Dollars consisting of (a) a new money multiple draw term loan credit facility in an aggregate principal amount not to exceed $12,500,000 (the "***New Money Facility***"), which shall consist of (i) the initial borrowing of an aggregate principal amount of $5,000,000 (the "***Initial Loan***") and (ii) one or more delayed draw term loan borrowings not to exceed an aggregate principal amount for all such borrowings of $7,500,000 (each such loan, a "***Delayed Draw Loan***" and collectively, the "***Delayed Draw Loans***") and (b) subject to, and upon the entry of, the DIP Order, the Roll-Up Loans in an aggregate principal amount up to $37,500,000 (the "***Roll-Up Facility***"), in each case to be afforded the Liens and priority set forth in the DIP Order and the other Loan Documents, and in each case, subject to the terms and conditions set forth herein, including the applicable terms and conditions set forth in **Section 6** hereof; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions set forth herein, to provide such debtor-in-possession, superpriority, senior secured term loan credit facility.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1
DEFINITIONS

1.01 Certain Defined Terms. As used herein (including the preamble and recitals), the following terms have the following respective meanings:

"***2023 Convertible Note Holders***" means the "Investors" as defined in Amendment No. 2 (as defined in the Pre-Petition Credit Agreement).

"***2023 Convertible Note Purchase Agreement***" means the "Note Purchase Agreement" as defined in Amendment No. 3 (as defined in the Pre-Petition Credit Agreement).

"***Acceptable Chapter 11 Plan***" means a Chapter 11 Plan that (a) provides for the termination of the Commitments and to the extent not otherwise previously paid in full in cash, the payment in full in cash of (x) the Obligations under the Loan Documents and (y) the "Obligations" under and as defined in the Pre-Petition Credit Agreement or (b) is otherwise acceptable to the Administrative Agent.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of an amalgamation, consolidation, merger, tender offer, purchase of Equity Interests or other assets or properties, or similar transaction having the same effect as any of the foregoing, (i) acquires any business or all or substantially all of the assets of another Person, (ii) acquires control of Equity Interests of another Person representing more than fifty percent (50%) of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a Board of directors, determined on a fully-diluted, as-if-converted or exercised basis, or (iii) acquires control of more than fifty percent (50%) of the Equity Interests of another Person engaged in any business that is not managed by a Board, determined on a fully-diluted, as-if-converted or exercised basis.

"***Administrative Agent***" has the meaning set forth in the preamble hereto.

"***Adverse Regulatory Event***" means the occurrence of any of the following events or circumstances:

(a) (i) the failure of the Borrower or any of its Subsidiaries to hold, directly or through licensees or agents, all Governmental Approvals and Healthcare Permits necessary or required for the Borrower or any such Subsidiary to conduct its respective operations and businesses in the ordinary course; or (ii) the failure of any such necessary or required Governmental Approval or Healthcare Permit to be valid or otherwise effective and in full force and effect for purposes of conducting (to the extent necessary or required) such operations and businesses;

(b) the failure of the Borrower or any of its Subsidiaries to make or file with the FDA or any other applicable Governmental Authority any required notice, registration, report or the like (each a "***Regulatory Filing***"), with respect to its ordinary course operations and businesses that could reasonably be expected to result in the loss of any such Regulatory Filing that is necessary or required for the Borrower or any such Subsidiary to conduct its respective operations and businesses in the ordinary course;

(c) the Borrower or any of its Subsidiaries receives any warning letter, notice or similar document with respect to any of its Products or any Commercialization and Development activities or any of its business activities from any Governmental Authority that (i) asserts that such Person lacks a required Governmental Approval or Healthcare Permit or is otherwise in violation of (or is non-compliant with) any applicable Law, or (ii) requires or is reasonably likely to require or cause the Borrower or any such Subsidiary to discontinue, cease, withdraw or recall the Commercialization and Development of any Product;

(d) the Borrower or any of its Subsidiaries is notified in writing that a Governmental Authority has commenced any regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) with respect to any of its business activities; or voluntarily or involuntarily agrees to halt or discontinue its ordinary course business activities in whole or material part as a result of any of the foregoing; or

(e) (i) any Governmental Authority commences any criminal, injunctive, seizure, detention or civil penalty action, (ii) the Borrower or any Subsidiary enters into any consent decree, plea agreement or other final settlement with any Governmental Authority with respect to any of the foregoing, or (iii) the Borrower or any Subsidiary voluntarily or involuntarily recalls, halts or otherwise discontinues Commercialization and Development activities with respect to any Product.

"***Affected Financial Institution***" means (a) any EEA Financial Institution, or (b) any UK Financing Institution.

"***Affiliate***" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that with respect to any Lender, an Affiliate of such Lender shall include, without limitation, all of such Lender's Related Funds.

"***Agreement***" has the meaning set forth in the preamble hereto.

"***Amendment No. 5 Effective Date***" means February 4, 2025.

"***Amendment No. 6 Effective Date***" means March 21, 2025.

"***APA***" means an asset purchase agreement in form and substance acceptable to the Administrative Agent filed with the Bankruptcy Court pursuant to which the Borrower shall sell substantially all of its assets used in its business (such sale, the "***Sale***").

"***Applicable Margin***" means eleven and one-half of one percent (11.50%), as such percentage may be increased pursuant to **Section 3.02(b)**.

"***Approved Budget***" means the Initial Budget; provided, that, upon the written approval of the Administrative Agent of an Updated Budget in accordance with **Section 8.01(o)**, "Approved Budget" shall mean such Updated Budget.

"***Asset Sale***" has the meaning set forth in **Section 9.09**.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee of such Lender in substantially the form of **Exhibit F**.

"***Avoidance Actions***" means avoidance actions under Chapter 5 of the Bankruptcy Code or any applicable state law equivalents.

"***Bail-In Action***" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"***Bail-In Legislation***" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"***Bailee Letter***" means a bailee letter substantially in the form of Exhibit F to the Security Agreement.

"***Bankruptcy Code***" means Title 11 of the United States Code entitled "Bankruptcy."

"***Bankruptcy Court***" means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Case from time to time.

"***Benefit Plan***" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Obligor or Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Bid Procedures and Scheduling Motion***" means a motion to approve bidding procedures and stalking horse protections in respect of a Sale, which motion and any related order, exhibits or supplements shall be in form and substance reasonably acceptable to the Administrative Agent.

"***Board***" means, with respect to any Person, the board of directors (or equivalent management or oversight body) of such Person or any committee thereof duly authorized to act on behalf of such board or equivalent body.

"***Borrower***" has the meaning set forth in the preamble hereto.

"***Borrowing Date***" means, as the context may require, the Closing Date (for the Initial Loan borrowing) or any Delayed Draw Borrowing Date (for the borrowing of Delayed Draw Loans).

"***Borrowing Notice***" means a written notice substantially in the form of **Exhibit B**.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York, New York.

"***Capital Lease Obligations***" means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP (with all amounts calculated without giving effect to any change in accounting for

leases pursuant to GAAP, including, without limitation, resulting from the implementation of changes to (x) Accounting Standards Codification Topic 840, Leases, or (y) Accounting Standards Codification Topic 842, Leases).

"***Carve-Out***" shall have the meaning specified in the Interim DIP Order prior to entry of the Final DIP Order, and the Final DIP Order thereafter.

"***Case***" has the meaning set forth in the recitals hereto.

"***Casualty Event***" means the damage, destruction or condemnation, as the case may be, of any property of any Person.

"***Change of Control***" means (i) (A) any Person or two or more Persons (other than the Holders) acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by Contract or otherwise, control over, voting stock of the Borrower representing forty percent (40%) or more of the combined voting power of all voting stock of the Borrower, determined on a fully-diluted, as if converted or exercised basis, or (B) one or more Holders, individually or collectively, fail to own and hold, directly or indirectly, beneficially and of record, at least twenty percent (20%) of the Equity Interests of the Borrower having ordinary voting power, determined on a fully-diluted basis, (ii) the Borrower shall cease to own, directly or indirectly, beneficially and of record, one hundred percent (100%) of the issued and outstanding Equity Interests of each of its Subsidiaries (other than directors' qualifying shares or other similar shares as required by applicable law), free and clear of all Liens (other than Specified Permitted Liens), or (iii) the sale of all or substantially all of the property or business of the Borrower and its Subsidiaries, taken as a whole.

"***Chapter 11 Plan***" means a chapter 11 plan in the Case of the Debtor.

"***Charter***" means the Borrower's amended and restated certificate of incorporation, as in effect on the Amendment No. 5 Effective Date, and as subsequently amended or otherwise modified as permitted hereunder.

"***Claim***" means each of the following, when in writing: any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, information (brought by a public prosecutor without grand jury indictment) or other similar process, assessment or reassessment, whether made, converted or assessed in connection with a debt, liability, dispute, breach, failure or otherwise.

"***Class B Common Stock***" has the meaning ascribed thereto in the Charter.

*"**Closing Date**"* means the date the conditions to funding the Initial Loan set forth in **Section 6.01** are satisfied or waived in accordance with such Section.

"***Closing Date Lender***" has the meaning set forth in the preamble hereto.

"***Closing Fee***" has the meaning set forth in **Section 3.04**.

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"***Collateral***" has the meaning set forth in the Security Agreement and all other assets that become subject to the Liens created by the Security Agreement from time to time, the Interim DIP Order or the Final DIP Order, provided, that to the extent of any conflict with respect to the Liens created by the Security Agreement, the Interim DIP Order or the Final DIP Order, then the Interim DIP Order (and, when entered, the Final DIP Order) shall control.

"***Commercialization and Development***" means, with respect to any Product, any combination of (i) research, development, manufacturing, quality compliance, use, sale, licensing, importation, exportation, shipping, storage, handling, designing, labeling, marketing, promotion, supply, dispensing, distribution, testing, packaging, purchasing or other commercialization activity, (ii) receipt of payment or other remuneration in respect of any of the foregoing (including, without limitation, in respect of licensing, royalty or similar payments) or (iii) any similar or other activities the purpose of which is to commercially exploit such Product.

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make the Initial Loan to the Borrower on the Closing Date and the Delayed Draw Loans to the Borrower on any Delayed Draw Borrowing Date, in each case, in accordance with the terms and conditions of this Agreement, which commitments are in the amounts set forth opposite such Lender's name on **Schedule 1** hereto, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise.

"***Commodity Account***" means any commodity account, as such term is defined in Section 9-102 of the NY UCC.

"***Confirmation Order***" means an order of the Bankruptcy Court confirming an Acceptable Chapter 11 Plan pursuant to Section 1129 of the Bankruptcy Code, in form and substance acceptable to the Administrative Agent, which shall be in full force and effect and shall not be reversed, vacated, stayed, amended, supplemented or otherwise modified, in each case, without the prior written consent of the Administrative Agent.

"***Conforming Changes***" means, with respect to either the use or administration of One-Month Term SOFR, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), with respect to the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests, prepayments, or conversion or continuation notices, the applicability and length of lookback periods, the applicability of **Section 3.02(f)** and other technical, administrative or operational matters) that the Administrative Agent reasonably decides may be appropriate to reflect the adoption and implementation of such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such rate exists, in such other manner of administration

as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"***Connection Income Taxes***" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"***Consummation Date***" means the date of substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Chapter 11 Plan that is confirmed pursuant to a Confirmation Order of the Bankruptcy Court.

"***Contingent Acquisition Obligations***" has the meaning set forth in **clause (v)** of the definition of "Indebtedness".

"***Contract***" means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement, indenture, instrument, or engagement under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise).

"***Control***" means, in respect of a particular Person, the possession, by one or more other Persons, directly or indirectly, of the power to direct or cause the direction of the management or policies of such particular Person, whether through the ability to exercise voting power, by contract or otherwise. "***Controlling***" and "***Controlled***" (and similar derivatives) have meanings correlative thereto.

"***Controlled Account***" has the meaning set forth in **Section 8.17(a)**.

"***Controlled Investment Affiliate***" means, as to any Person, any other Person that directly or indirectly is in Control of, is Controlled by, or is under common Control with such Person and is organized by such first Person (or any other Person Controlling such first Person) primarily for making equity investments in the Borrower or any other portfolio companies in the ordinary course of business.

"***Convertible Note Holders***" means the Subsequent Convertible Note Holders and the 2023 Convertible Note Holders.

"***Copyright***" means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof, and all other rights whatsoever accruing thereunder or pertaining thereto.

"***Debtor***" has the meaning set forth in the recitals hereto.

"***Default***" means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

"***Default Rate***" has the meaning set forth in **Section 3.02(b)**.

"***Delayed Draw Borrowing Date***" means the date on which any Delayed Draw Loans are made pursuant to the terms and conditions hereof.

"***Delayed Draw Borrowing Date Certificate***" has the meaning set forth in **Section 6.02(a)**.

"***Delayed Draw Loan***" has the meaning set forth in the recitals hereto.

"***Deposit Account***" means any deposit account, as such term is defined in Section 9-102 of the NY UCC.

"***Designated Jurisdiction***" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"***DIP Facility***" has the meaning specified in the recitals hereto.

"***DIP Motion***" means a motion, in form and substance acceptable to the Administrative Agent, to be filed in the Bankruptcy Court, pursuant to which motion the Debtor shall seek entry of the Interim DIP Order and the Final DIP Order.

"***DIP Orders***" mean, collectively, the Interim DIP Order and the Final DIP Order.

"***Disqualified Equity Interests***" means (a) with respect to any Person (including the Borrower or any other Obligor), any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable upon exercise or otherwise), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is one hundred and eighty (180) days after the Maturity Date; and (b) with respect to the Borrower at any time after the Amendment No. 5 Effective Date, any of its Class B Common Stock or any other High Vote Stock.

"***Dollars***" and "***$***" means lawful money of the United States of America.

"***EEA Financial Institution***" means (i) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (ii) any entity established in an EEA Member Country which is a parent of an institution described in **clause (i)** of this definition, or (iii) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in **clauses (i)** or **(ii)** of this definition and is subject to consolidated supervision with its parent.

"***EEA Member Country***" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"***EEA Resolution Authority***" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"***Environmental Law***" means any Law or Governmental Approval relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and all local laws and regulations, whether U.S. or non-U.S., related to environmental matters and any specific agreements entered into with any competent authorities which include commitments related to environmental matters.

"***Equity Interests***" means, with respect to any Person (for purposes of this defined term, an "***issuer***"), all shares of, interests or participations in, or other equivalents in respect of such issuer's capital stock, including all membership interests, partnership interests or equivalent, and all debt or other securities (including warrants, options and similar rights) directly or indirectly exchangeable, exercisable or otherwise convertible into, such issuer's capital stock, whether now outstanding or issued after the Closing Date, and in each case, however classified or designated and whether voting or non-voting.

"***Equivalent Amount***" means, with respect to an amount denominated in a single currency, the amount in another currency that could be purchased by the amount in the former currency determined by reference to the Exchange Rate at the time of determination.

"***ERISA***" means the United States Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"***ERISA Event***" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) of any ERISA Affiliate from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by any

Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which could reasonably be expected to give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any Lien (or the fulfillment of the conditions for the imposition of any Lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or Title IV of ERISA, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor; or (xix) any Foreign Benefit Event.

"***ERISA Funding Rules***" means the rules regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"***EU Bail-In Legislation Schedule***" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"***Event of Default***" has the meaning set forth in **Section 11.01**.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Exchange Rate***" means, as of any date of determination, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Reuters screen at or about

11:00 a.m. (New York City time) on such date. In the event that such rate does not appear on the Reuters screen, the "***Exchange Rate***" shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably agreed upon by the Borrower and the Administrative Agent (each acting in good faith) or, in the absence of such agreement within two (2) Business Days, such Exchange Rate shall instead be reasonably designated by the Administrative Agent.

"***Excluded Account***" means any (i) bank or deposit account used exclusively for payroll, the withheld employee portion of payroll taxes or other employee wage and benefit payments, (ii) merchant account in the nature of accounts with payment service providers such as Square, PayPal and Stripe, and (iii) any bank or deposit account exclusively used for purposes of cash deposits or pledges constituting Permitted Liens pursuant to **Sections 9.02(e)** or **Section 9.02(l)**.

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 5.03(h)**) or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 5.03**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient's failure to comply with **Section 5.03(f)**, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

"***Existing First Lien Obligations***" means the "Obligations" under and as defined in the Pre-Petition Credit Agreement (including, for the avoidance of doubt, all applicable "Early Prepayment Fees" and "Exit Fees" (as each such term is defined in the Pre-Petition Credit Agreement)).

"***Exit Fee***" has the meaning set forth in **Section 3.05**.

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

"***FD&C Act***" means the U.S. Food, Drug and Cosmetic Act of 1938 (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

"***FDA***" means the U.S. Food and Drug Administration and any successor entity.

"***Federal Funds Effective Rate***" means, for any day, the greater of (i) 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 sets forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate and (ii) zero percent (0%).

"***Final DIP Order***" means an order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in form and substance satisfactory to the Administrative Agent approving, on a final basis, the Loan Documents and the transactions contemplated thereby and providing the Lenders and the other Indemnified Parties with customary releases acceptable to the Administrative Agent.

"***Foreign Benefit Event***" means, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable Law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable Law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging the insolvency of any such Foreign Pension Plan, (d) the incurrence of any liability in excess of $100,000 by the Borrower or any of its Subsidiaries under applicable Law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable Law and that could reasonably be expected to result in the incurrence of any liability by the Borrower or any of its Subsidiaries, or the imposition on the Borrower or any of its Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable Law, in each case in excess of $100,000.

"***Foreign Lender***" means a Lender that is not a U.S. Person.

"***Foreign Pension Plan***" means any benefit plan that under applicable Law, other than the Laws of the United States or any political subdivision thereof, is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

"***GAAP***" means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession

that are applicable to the circumstances as of the date of determination. Unless otherwise mutually agreed upon by the Borrower and the Administrative Agent pursuant to **Section 1.02(b)**, all references to "GAAP" used herein shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(e)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance, exemption, filing or notice that is issued or granted by or from (or pursuant to any act of) any Governmental Authority pursuant to or in connection with any Law (including any Healthcare Law), including any application or submission related to any of the foregoing, whether related to any Product, any Commercialization and Development of any Product or other business or commercial activity.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S., including the FDA and any other agency, branch or other governmental body that has regulatory, supervisory or administrative authority or oversight over, or is charged with the responsibility or vested with the authority to administer or enforce, any Healthcare Laws.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"***Hazardous Material***" means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (i) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (ii) any material classified or regulated as "hazardous" or "toxic" or words of like import pursuant to an Environmental Law.

"***Healthcare Laws***" means all applicable Laws and Governmental Approvals, whether U.S. or non-U.S., federal, state, local or equivalent, relating to any Product, the Commercialization and Development of any Product or the provision of medical or other professional healthcare services

or supplies, billing and collection practices relating to the payment for healthcare services or supplies, insurance laws (including law related to payment for "no-fault" claims) and workers compensation laws as they relate to the provision of, and billing and payment for, the sale or distribution of any Products, healthcare services, patient healthcare, patient healthcare information, patient abuse, the quality and adequacy of medical care, equipment, personnel, operating policies, fee splitting, including, without limitation, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)) (the "***Federal Anti-Kickback Statute***"), the Physician Self-Referral Statute (42 U.S.C. § 1395nn) (the "***Stark Law***"), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Act (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286, 287, 1035, 1347 and 1349, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d et seq.), the exclusion law (42 U.S.C. § 1320a-7), the civil monetary penalties law (42 U.S.C. § 1320a-7a), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.), the Federal Food Drug & Cosmetic Act (FD&C Act) (21 U.S.C. § 321 et seq., the Public Health Service Act (PHS Act) (42 U.S.C. § 201 et seq.), the statutes, regulations and binding directives of applicable federal healthcare programs, including but not limited to Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act), any binding collection and reporting requirements relating to applicable federal health care programs and any successor government programs, any rules and regulations promulgated pursuant to the statutes listed herein and any and all comparable U.S. and non-U.S. Laws and other applicable healthcare laws and regulations.

"***Healthcare Permit***" means, with respect to any Person and with respect to any of its Products or the Commercialization and Development of any Product or otherwise in its ordinary course business activities, including the Commercialization and Development of any Product, any Governmental Approval (i) issued or required under any Healthcare Laws applicable to such activities of such Person, including activities related to the provision of billing or invoicing for the sale of Products or other goods or services regulated or administered under any Healthcare Laws, or (ii) issued to such Person or required to be held by such Person under any Healthcare Laws with respect to the Commercialization and Development of any Product.

"***Hedging Agreement***" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"***High Vote Stock***" means any Equity Interests issued by the Borrower that (i) possess the right to more than one vote per share on matters presented to the stockholders of the Borrower or (ii) are convertible, exercisable or exchangeable for or into Class B Common Stock or any other High Vote Stock.

"***Holder***" means (i) 8VC Fund I, LP, (ii) Founders Fund, (iii) Perceptive Advisors LLC, (iv) Hadley Harbor Master Investors (Cayman) III L.P., (v) Menlo Ventures XI, L.P., (vi) RA Capital Advisors LLC, (vii) WI Harper Fund, (viii) The Continuous Agency Trust, (ix) Luma Bio, L.P. and (x) Moore Strategic Ventures, LLC, and each Controlled Investment Affiliate of any holder specified in **clauses (i)** through **(x)** of this definition.

"***Indebtedness***" of any Person means, without duplication, (i) all obligations of such Person for borrowed money or obligations of such Person with respect to deposits or advances of any kind by third parties, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements, or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid (excluding trade account payables), (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services ((A) excluding current accounts payable incurred in the ordinary course of business, but (B) including earn-out payments, purchase price adjustments and similar contingent payment obligations relating to any Acquisition (such obligations arising pursuant to **clause (B)**, collectively, "***Contingent Acquisition Obligations***")), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (xii) all obligations of such Person under license or other agreements containing a guaranteed minimum payment or purchase by such Person, (xiii) any Disqualified Equity Interests of such Person, and (xiv) all other obligations required to be classified as indebtedness of such Person under GAAP. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Party***" has the meaning set forth in **Section 14.03(b)**.

"***Indemnified Taxes***" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (ii) to the extent not otherwise described in **clause (i)**, Other Taxes.

"***Information Certificate***" means an Information and Collateral Certificate, in substantially the form set forth in **Exhibit G**.

"***Initial Budget***" has the meaning ascribed to such term in **Section 7.27**.

"***Initial Loan***" has the meaning set forth in the recitals to this Agreement.

"***Insolvency Proceeding***" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

"***Intellectual Property***" means all Patents, Trademarks, Copyrights, and Technical Information, whether registered or not, U.S. or non-U.S., including (without limitation) all of the following:

(i) applications, registrations, amendments and extensions relating to such Intellectual Property;

(ii) rights and privileges arising under any applicable Laws with respect to such Intellectual Property;

(iii) rights to sue for or collect any damages for any past, present or future infringements of such Intellectual Property; and

(iv) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest Period***" means (i) initially, the period commencing on (and including) the Closing Date and ending on (and including) the last day of the calendar month in which the Closing Date occurred, and (ii) thereafter, the period beginning on (and including) the first day of each succeeding calendar month and ending on the earlier of (and including) (x) the last day of such calendar month and (y) the Maturity Date.

"***Interest Rate***" means, for any Interest Period, the sum of (i) the Applicable Margin plus (ii) the greater of (x) the Reference Rate as of the second Business Day immediately preceding the first day of such Interest Period and (y) four percent (4.00%).

"***Interim DIP Order***" means the order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) approving the Loan Documents and the transactions contemplated thereby on an interim basis in the Case.

"***Invention***" means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

"***Investment***" means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the making of any deposit with, or advance, loan, assumption of debt, or other extension of credit to, or capital contribution in any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (iii) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount

committed to be advanced, lent or extended to such Person; or (iv) the entering into of any Hedging Agreement. The amount of an Investment will be determined at the time the Investment is made without giving effect to any subsequent changes in value.

"***IRS***" means the U.S. Internal Revenue Service or any successor agency and to the extent relevant, the U.S. Department of the Treasury.

"***Landlord Consent***" means a landlord consent substantially in the form of Exhibit G to the Security Agreement.

"***Law***" means any U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including any interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lenders***" has the meaning set forth in the preamble hereto.

"***Lien***" means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest.

"***Loan***" means the Initial Loan made on the Closing Date, any Delayed Draw Loan, the Roll-Up Loan deemed to be made hereunder upon the issuance of the Final DIP Order, any PIK Loan, and "***Loans***" means, as the context may require, any combination of the foregoing.

"***Loan Documents***" means, collectively, this Agreement, the Notes, the Security Documents, any Guarantee, and any other guaranty, security agreement, subordination agreement, intercreditor agreement and any other present or future document, instrument, agreement, certificate or other amendment, waiver or modification of the foregoing, delivered to or for the benefit of the Administrative Agent or any Secured Party in connection with this Agreement (including, without limitation, in connection with **Section 8.12**) or any of the other Loan Documents, in each case, as amended or otherwise modified.

"***Loss***" means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

"***Margin Stock***" means "margin stock" within the meaning of Regulation U and Regulation X.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean, excluding results from the filing and administration of the Case, a material adverse change in or effect on (i) the business, assets, financial performance, operations or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, as and when due, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights and remedies of the Administrative Agent or the Lenders under any of the Loan Documents.

"***Material Agreement***" means (i) any Contract to which the Borrower or any of its Subsidiaries is a party or a beneficiary from time to time, the absence or termination of which could reasonably be expected to result in a Material Adverse Effect, and (ii) any other Contract to which the Borrower or any of its Subsidiaries is a party or a guarantor (or equivalent) that, during any period of twelve (12) consecutive months, is reasonably expected to (1) result in payments or receipts (including royalty, licensing or similar payments) made to the Borrower or any of its Subsidiaries in an aggregate amount in excess of $100,000, or (2) require payments or expenditures (including royalty, licensing or similar payments) to be made by the Borrower or any of its Subsidiaries in an aggregate amount in excess of $100,000.

"***Material Indebtedness***" means, at any time, any Indebtedness of any Obligor or any Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds $100,000 (or the Equivalent Amount in other currencies).

"***Material Intellectual Property***" means all Obligor Intellectual Property, whether currently owned or licensed, or acquired, developed or otherwise licensed or obtained after the date hereof (i) the loss of which could reasonably be expected to result in a Material Adverse Effect or (ii) that on an individual asset basis has a fair market value in excess of $100,000, as determined in good faith by the Borrower.

"***Material Regulatory Event***" means an Adverse Regulatory Event that (i) individually has resulted in, or could reasonably be expected to result in, a fine, penalty or Loss (including a loss of Revenue) in excess of $100,000 per occurrence, including any Loss resulting from a recall (or equivalent) of any Product (or cessation of Commercialization and Development Activities with respect to any Product), (ii) when taken together with each other Adverse Regulatory Event that has occurred since the Closing Date, has resulted in, or could reasonably be expected to result in, a fine, penalty or Loss (including a loss of Revenue) in excess of $200,000, or (iii) that could reasonably be expected to result in the loss of any Governmental Approvals or Healthcare Permits necessary or required for the Borrower or any such Subsidiary to conduct its respective operations and businesses in the ordinary course.

"***Maturity Date***" means the earliest of (a) July 18, 2025, (b) the date of conversion of the Case to a case under Chapter 7 of the Bankruptcy Code without prior written consent of the Administrative Agent, (c) the date of dismissal of the Case without the prior written consent of the Administrative Agent, (d) the date of appointment in the Case of a trustee without the prior written consent of the Administrative Agent, (e) the appointment of an examiner with expanded powers

without the prior written consent of the Administrative Agent, (f) the Consummation Date of any Chapter 11 Plan, (g) the date of the consummation of the Sale or (h) the date of acceleration of the Loans (including, without limitation, the non-satisfaction of any Milestone by the applicable specified deadline and the non-waiver of such non-satisfaction by the Administrative Agent and the Majority Lenders).

"***Milestones***" has the meaning assigned to such term in **Section 8.22**.

"***Medicaid***" means that government-sponsored entitlement program under Title XIX, P.L. 89-97 of the Social Security Act, which provides federal grants to states for medical assistance based on specific eligibility criteria, as set forth on Section 1396, et seq. of Title 42 of the United States Code.

"***Medicare***" means that government-sponsored insurance program under Title XVIII, P.L. 89-97, of the Social Security Act, which provides for a health insurance system for eligible elderly and disabled individuals, as set forth at Section 1395, et seq. of Title 42 of the United States Code.

"***Multiemployer Plan***" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Net Cash Proceeds***", means, (i) with respect to any Casualty Event experienced or suffered by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) including, without limitation, in the form of insurance proceeds or condemnation awards in respect of such Casualty Event, from time to time by or on behalf of such Person after deducting therefrom only (x) reasonable costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; and (ii) with respect to any Asset Sale by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (x) reasonable costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; provided that, in each case of **clauses (i)** and **(ii)**, costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries and (y) properly attributable to such Casualty Event or Asset Sale, as the case may be.

"***New Money Facility***" has the meaning specified in the recitals hereto.

"***Note***" means a promissory note, in substantially the form of **Exhibit A** hereto, executed and delivered by the Borrower to any Lender in accordance with **Section 2.04**.

"***Note Purchase Agreement***" means, collectively, (i) the 2023 Convertible Note Purchase Agreement and (ii) the Senior Subordinated Note Purchase Agreement.

"***NY UCC***" means the UCC as in effect from time to time in New York.

"***Obligations***" means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Secured Party, any indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is the Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

"***Obligor Intellectual Property***" means, at any time of determination, Intellectual Property owned by, licensed to or otherwise held by the Borrower or any of its Subsidiaries at such time.

"***Obligor***" means the Borrower.

"***OFAC***" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"***One-Month Term SOFR***" means, the Term SOFR Reference Rate (expressed, as a decimal, rounded upwards, if necessary, to the nearest 1/100th of 1%) for a one month tenor on the day (such day, the "***Periodic Term SOFR Determination Day***") that is two (2) U.S. Government Securities Business Days prior to the first day of the applicable Interest Period, as such rate is published by the Term SOFR Administrator; provided that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then One-Month Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

"***Organic Document***" means, for any Person, such Person's formation documents, including, as applicable its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Person's Equity Interests, or any equivalent document of any of the foregoing.

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

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(h)**).

"***Participant***" has the meaning set forth in **Section 14.05(e)**.

"***Participant Register***" has the meaning set forth in **Section 14.05(g)**.

"***Patents***" means all patents and patent applications, including (i) the Inventions and improvements described and claimed therein, (ii) the reissues, divisions, continuations, renewals, extensions, and continuations in part thereof, and (iii) all income, royalties, damages and payment now or hereafter due and payable with respect thereto, (iv) all damages and payment for past or future infringements thereof, and rights to sue thereof, and (v) all rights whatsoever accruing thereunder or pertaining thereto throughout the world.

"***Patriot Act***" has the meaning set forth in **Section 14.20.**

"***Payment Date***" means (i) the last day of each Interest Period; provided that if such last day of any Interest Period is not a Business Day, then the Payment Date shall be the next succeeding Business Day, and (ii) the Maturity Date.

"***PBGC***" means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Periodic Term SOFR Determination Day***" has the meaning set forth in the definition of "One-Month Term SOFR".

"***Permitted Cash Equivalent Investments***" means (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any state thereof having maturities of not more than one year from the date of acquisition; (iii) commercial paper maturing no more than one year after the date of its acquisition and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (iv) (A) demand deposits, (B) time deposits and certificates of deposit, (C) bankers' acceptances and (D) overnight bank deposits, in each case maturing within one hundred and eighty (180) days from the date of acquisition thereof issued or guaranteed by or placed with any domestic office of any commercial bank, organized under the laws of the United States of America or any state thereof, having capital, surplus and undivided profits in excess of $500,000,000 whose short-term debt is rated "A-2" or higher by Standard & Poor's Ratings Group or "P-2" or higher by Moody's Investors Service, Inc.; (v) fully collateralized repurchase obligations with a term of not more than thirty (30) days for underlying securities of the type described in **clause (ii)** above entered into with a financial institution meeting the qualifications specified in **clause (iv)** above; (vi) money market funds at least ninety percent (90%) of the assets of which constitute Permitted Cash Equivalent Investments of the kinds described in **clauses (i)** through **(v)** of this definition.

"***Permitted Indebtedness***" means any Indebtedness permitted under **Section 9.01**.

"***Permitted Liens***" means any Liens permitted under **Section 9.02**.

"***Permitted Pre-Petition Liens***" has the meaning set forth in **Section 7.18**.

"***Permitted Variance***" shall have the meaning specified in the Interim DIP Order prior to entry of the Final DIP Order, and the Final DIP Order thereafter.

"***Person***" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"***Petition Date***" has the meaning specified in the recitals hereto.

"***PIK Interest***" has the meaning set forth in **Section 3.02(d)**.

"***PIK Loan***" has the meaning set forth in **Section 3.02(d)**.

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Prepayment Date***" has the meaning set forth in **Section 3.03(b)**.

"***Prepayment Price***" has the meaning set forth in **Section 3.03(b)**.

"***Pre-Petition Credit Agreement***" means the Credit Agreement and Guaranty, dated as of January 24, 2022, by and among the Borrower, certain subsidiaries of the Borrower from time to time party thereto, the Lenders from time to time party thereto and the Administrative Agent, as amended, supplemented or otherwise modified from time to time.

"***Pre-Petition Debt***" means the Indebtedness of the Debtor outstanding and unpaid on the Petition Date.

"***Pre-Petition Payment***" means a payment, directly or indirectly, by way of adequate protection or otherwise of principal or interest or otherwise on account of any (a) Pre-Petition Debt, (b) "critical vendor payments" or (c) trade payables (including, without limitation, in respect of reclamation claims) or other pre-petition claims against the Debtor.

"***Priming Liens***" has the meaning set forth in **Section 7.18**.

"***Proceeding***" has the meaning set forth in **Section 14.03(b)**.

"***Product***" means all CRISPR reagents, oligonucleotide products, kits and CRISPR engineered cell product offerings sold by the Borrower that are in process of development or developed, distributed, imported, exported, labeled, promoted, licensed, marketed, sold or

otherwise subject to Commercialization and Development by or on behalf of the Borrower or any of its Subsidiaries at any time, including by way of an outbound license or similar arrangement to a third party for Commercialization and Development.

"***Product Related Information***" means, with respect to any Product, all books, records, lists, ledgers, files, manuals, Contracts, correspondence, reports, plans, drawings, data and other information of every kind (in any form or medium), including related to Intellectual Property, and all techniques and other know-how, that is necessary or useful for the Commercialization and Development of any such Product, including (i) branding materials, packaging and other marketing, promotional and sales materials and information, (ii) clinical data, information included or supporting any related Governmental Approval or Healthcare Permit and all other documents, records, files, data and other information necessary to or useful for the Commercialization and Development of any Product, (iii) litigation and dispute records, and accounting records, and (iv) all other Technical Information, techniques and know-how necessary or useful in connection with any such Commercialization and Development of any Product.

"***Prohibited Payment***" means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any applicable Law for the purpose of influencing any act or decision of such payee in his official capacity, inducing such payee to do or omit to do any act in violation of his lawful duty, securing any improper advantage or inducing such payee to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

"***Proportionate Share***" means, with respect to each Lender, the percentage obtained by dividing (i) the sum of all Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of all Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

"***Public Offering***" means, with respect to any Person, any sale of Equity Interests of such Person pursuant to an offering that is underwritten on a firm commitment basis by a nationally recognized investment banking firm and, as a result of which, such Person becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act immediately following such offering.

"***Qualified Equity Interest***" means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

"***Qualified Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

"***Real Property Security Documents***" means any Landlord Consents, Bailee Letters, any mortgage or deed of trust or any other real property security document executed or required hereunder to be executed by any Obligor and granting a security interest in real property owned or leased (as tenant) by any Obligor in favor of the Secured Parties for purposes of securing the Obligations.

"***Recipient***" means any Lender, the Administrative Agent or any other recipient of any payment to be made by or on account of any Obligation, as applicable.

"***Reference Rate***" means One-Month Term SOFR; provided that if One-Month Term SOFR can no longer be determined by the Administrative Agent for any reason (in its sole discretion, which determination shall be conclusive absent manifest error or demonstrable), including as a result of the Term SOFR Reference Rate not being available or published on a current basis or as a result of the occurrence of a Reference Rate Transition Event, then the Administrative Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to One-Month Term SOFR that gives due consideration to the then prevailing market convention for determining a rate of interest for middle-market loans in the United States at such time, and 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; provided, further that, until such alternate rate of interest is agreed upon by the Administrative Agent and the Borrower, the Reference Rate for purposes hereof and of each other Loan Document shall be the Wall Street Journal Prime Rate.

"***Reference Rate Transition Event***" means the occurrence of one or more of the following events with respect to the Reference Rate then in effect:

(a) a public statement or publication of information by or on behalf of the administrator of such Reference Rate (or the published component used in the calculation thereof) stating that such administrator has ceased or will cease to provide such Reference Rate (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Reference Rate (or such component thereof);

(b) a public statement or publication of information by the Governmental Authority governing or regulating the administrator of such Reference Rate (or the published component used in the calculation thereof), the U.S. Federal Reserve System, an insolvency official with jurisdiction over the then-current administrator for such Reference Rate (or such component thereof), a resolution authority with jurisdiction over the then-current administrator for such Reference Rate (or such component thereof) or a court or an entity with similar insolvency or resolution authority over the administrator for such Reference Rate (or such component thereof), which in any case states that the then-current administrator of such Reference Rate (or such component thereof) has ceased or will cease to provide such Reference Rate (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Reference Rate (or such component thereof); or

(c) a public statement or publication of information by the Governmental Authority governing or regulating the then-current administrator of such Reference Rate stating that such Reference Rate (or the published component used in the calculation thereof) is no longer, or as a of a specified future date will not be, representative.

A "Reference Rate Transition Event" will be deemed to have occurred with respect to any Reference Rate if a public statement or publication of information set forth above has occurred with respect to each then-current available tenor of such Reference Rate (or the published component used in the calculation thereof).

"***Referral Source***" has the meaning set forth in **Section 7.07(c)**.

"***Register***" has the meaning set forth in **Section 14.05(d)**.

"***Regulation T***" means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation X***" means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

"***Related Fund***" means, with respect to any Lender, a fund which is managed or advised by the same investment manager or investment adviser as such Lender or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of such Lender.

"***Related Parties***" has the meaning set forth in **Section 14.16**.

"***Reporting Date***" has the meaning set forth in **Section 8.01(o)**.

"***Resolution Authority***" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"***Responsible Officer***" of any Person means each of the president, chief executive officer, chief financial officer, chief accounting officer, treasurer, general counsel and similar officer of such Person.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of the Borrower or any of its Subsidiaries, any payment of interest, principal or fees in respect of any Indebtedness owed by the Borrower or any of its Subsidiaries to any holder of any Equity Interests of the Borrower or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of the Borrower or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of the Borrower or any of its Subsidiaries.

"***Restrictive Agreement***" means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of the Borrower or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its properties or assets (other than (x) customary provisions in Contracts (including without limitation leases and licenses of Intellectual Property) restricting the assignment thereof and (y) restrictions or conditions imposed by any Contract governing secured Permitted Indebtedness permitted under **Section 9.01(g)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of the Borrower or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to the Borrower or any of its Subsidiaries or such other Obligor or to Guarantee Indebtedness of the Borrower or any of its Subsidiaries thereof or such other Obligor.

"***Revenue***" means, for any relevant fiscal period, the consolidated total revenues of the Borrower and its Subsidiaries for such fiscal period resulting from the Commercialization and Development of Products in the ordinary course of business, as recognized on the consolidated income statement of the Borrower and its Subsidiaries for such fiscal period, determined on a consolidated basis in accordance with GAAP.

"***Roll-Up Facility***" has the meaning specified in the recitals hereto.

"***Roll-Up Loan***" has the meaning specified in **Section 2.03**.

"***Roll-Up Loan Amount***" means, with respect to any Lender at the time of any borrowing, such Lenders Proportionate Share of $37,500,000.

"***Sale***" has the meaning specified in the definition of "APA".

"***Sanction***" means any international economic sanction administered or enforced by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union or its Member States, Her Majesty's Treasury or other relevant sanctions authority.

"***Secured Party***" means each Lender, the Administrative Agent, each other Indemnified Party, any other holder of any Obligation, and any of their respective permitted transferees or assigns.

"***Securities Account***" means any securities account, as such term is defined in Section 8-501 of the NY UCC.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Security Agreement***" means any security agreement among the Obligors required to be a party thereto, as the grantors and the Administrative Agent, granting a security interest in such Obligors' personal property in favor of the Administrative Agent.

"***Security Documents***" means, collectively, each Security Agreement (if any), each Real Property Security Document (if any), each Short-Form IP Security Agreement (if any), the DIP

Orders, and each other security agreement, control agreement or financing statement, registration, recordation, filing, instrument or approval required, entered into or recommended to grant, perfect and otherwise render enforceable Liens in favor of the Secured Parties for purposes of securing the Obligations, including (without limitation) pursuant to **Section 8.12**.

"***Senior Subordinated Note Purchase Agreement***" means that certain Note Purchase Agreement, dated as of March 20, 2024 between the Borrower and the certain investors party thereto.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements, substantially in the form Exhibit C, Exhibit D or Exhibit E to the Security Agreement, entered into by one or more Obligors in favor of the Secured Parties, each in form and substance reasonably satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time).

"***SOFR***" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

"***Specified Material Intellectual Property***" means any Obligor Intellectual Property including the Intellectual Property listed on **Schedule 7.05(b)(i)** that both: (i) qualifies as Material Intellectual Property and (ii) is (or is anticipated to be) used in the ordinary course of business of the Company or any of its Subsidiaries for the Commercialization and Development of any of their respective Products.

"***Specified Permitted Lien***" means any Lien permitted under **Sections 9.02(a)**, **(d)**, **(e)**, **(f)**, **(i)**, **(j)** and **(l)**.

"***Stalking Horse APA***" means the asset purchase agreement by and among an Affiliate of the Administrative Agent, as the purchaser, and the Borrower, as the seller.

"***Subsequent Convertible Note Holders***" means the "Investors" as defined in Amendment No. 3.

"***Subsidiary***" means, with respect to any Person (for purposes of this definition, the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more direct or indirect subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, all

references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower

"***Superpriority Claim***" means a claim against the Debtor in the Case which is an administrative expenses claim having priority over any or all administrative expenses in the Case, including administrative expenses of the kind that are specified in, or contemplated by, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code.

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

"***Technical Information***" means all trade secrets and other proprietary or confidential information, public information, non-proprietary know-how, any information of a scientific, technical, or business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Invention disclosures, all documented research, developmental, demonstration or engineering work and all other information, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs, information technology and any other information.

"***Term SOFR Administrator***" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"***Term SOFR Reference Rate***" means the forward-looking term rate based on SOFR.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Trademarks***" means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including (i) all renewals of trademark and service mark registrations, (ii) all rights to recover for all past, present and future infringements thereof and all rights to sue therefor, and (iii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof.

"***Transactions***" means the negotiation, preparation, execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is (or is intended to be) a party, the making of the Loans hereunder, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents.

"***UCC***" means, with respect to any applicable jurisdictions, the Uniform Commercial Code as in effect in such jurisdiction, as may be modified from time to time.

"***UK Financial Institution***" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"***UK Resolution Authority***" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"***United States***" or "***U.S.***" means the United States of America, its fifty (50) states and the District of Columbia.

"***Updated Budget***" has the meaning ascribed to such term in **Section 8.01(o)**.

"***U.S. Government Securities Business Day***" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a 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."

"***U.S. Person***" means a "United States person" as defined in Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning set forth in **Section 5.03(f)(ii)(B)(3)**.

"***Variance Period***" means as of the last day of any full calendar week covered in the applicable Approved Budget (commencing with the first Business Day of the fourth full week after the Petition Date), the period then ended measured from the first day of the first full calendar week covered in such Approved Budget; provided that such period shall in no event exceed the four calendar week period ending with the week then ended.

"***Variance Report***" has the meaning ascribed to such term in **Section 8.01(p)**.

"***Wall Street Journal Prime Rate***" means the Wall Street Journal Prime Rate, as published and defined in The Wall Street Journal.

"***Wholly-Owned Subsidiary***" means a Subsidiary of the Borrower as to which (i) the Borrower owns one hundred percent (100%) of the Equity Interests of such Subsidiary and (ii) all such Equity Interests have been pledged to the Administrative Agent pursuant to any Security Document and subject to a valid and enforceable first priority Lien in favor of the Administrative Agent.

"***Withdrawal Liability***" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

"***Withholding Agent***" means the Borrower, any other Obligor and the Administrative Agent.

"***Write-Down and Conversion Powers***" means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Accounting Terms and Principles.

(a) Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication.

(b) If at any time any change in GAAP or the application thereof would affect the computation of any financial term, covenant, ratio or requirement set forth in any Loan Document, and either the Borrower or the Administrative Agent shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such term, covenant, ratio or requirement to preserve the original intent thereof set forth in the applicable Loan Document in light of such change in GAAP or application thereof; provided that, until so amended, such term, covenant, ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein for all purposes hereof.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires,

(a) the terms defined in this Agreement include the plural as well as the singular and vice versa;

(b) words importing gender include all genders;

(c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;

(d) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;

(e) references to days, months and years refer to calendar days, months and years, respectively;

(f) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation";

(g) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including";

(h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property;

(i) accounting terms not specifically defined herein (other than "property" and "asset") shall be construed in accordance with GAAP;

(j) the word "will" shall have the same meaning as the word "shall";

(k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly; and

(l) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall be deemed to be a Lien for the benefit of the Secured Parties; and

(m) references to any Law will include all statutory and regulatory provisions amending, consolidating, replacing, supplementing or interpreting such Law from time to time.

Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents.

If any obligation to pay any amount pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day. For the purposes of calculations made pursuant to the terms of this Agreement or otherwise for purposes of compliance herewith, GAAP will be deemed to treat operating leases in a manner consistent with their current treatment under GAAP as in effect on the date of this Agreement, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

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

1.05 Reference Rate Replacement. Upon the occurrence of an event of the type described in the first proviso of the definition of "Reference Rate", the Administrative Agent will promptly notify the Borrower thereof and, as set forth in such proviso, the Administrative Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to One-Month Term SOFR; provided that there is no assurance that the composition or characteristics of any such alternative, successor or replacement Reference Rate will be similar to or produce the same value or economic equivalence as One-Month Term SOFR or that it will have the same volume or liquidity as did One-Month Term SOFR prior to its discontinuance or unavailability.

1.06 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (i) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or One-Month Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto, including whether the composition or characteristics of any such alternative, successor or replacement rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate or One-Month Term SOFR prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate or One-Month Term SOFR, any alternative, successor or replacement rate or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate or One-Month Term SOFR, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 2
THE COMMITMENTS AND THE LOANS

2.01 New Money Loans.

(a) On the terms and subject to the conditions of this Agreement and the DIP Orders, each Lender agrees to make (i) its Initial Loan on the Closing Date to the Borrower, in an aggregate principal amount for all Lenders not to exceed $$5,000,000 and (ii) Delayed Draw Loans to the Borrower, in one or more borrowing on any Delayed Draw Borrowing Date, in an aggregate principal amount for all Lenders and all such Delayed Draw Loan borrowings not to exceed $7,500,000.

(b) No amounts repaid or prepaid with respect to any Loan may be reborrowed.

(c) The Borrower may not borrow (x) less than an aggregate principal amount of $1,000,000 in any single borrowing of Delayed Draw Loans or (y) more than an amount necessary to fund authorized expenditures for a period of thirty (30) days following the applicable Delayed Draw Borrowing Date as reflected on the most recently delivered Approved Budget.

(d) There shall be no more than four (4) borrowings of Delayed Draw Loans.

(e) The Borrower may not request a new borrowing of Delayed Draw Loans earlier than ten (10) Business Days after the most recent borrowing of Delayed Draw Loans.

(f) Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made to the Borrower will be denominated solely in Dollars and no other currency.

2.02 Borrowing Procedures. Unless the Administrative Agent otherwise agrees in writing, at least three (3) Business Days prior to any proposed Closing Date, the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice, which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (New York City time) on a Business Day, shall be deemed to have been delivered on the next Business Day.

2.03 Roll-Up Loans. Subject to the terms and conditions set forth herein and in the DIP Orders, (x) upon entry of the Interim DIP Order, $12,500,000 of Existing First Lien Obligations held by each Lender on such date shall be substituted, exchanged and deemed to be converted into Loans made hereunder (the "***Roll-Up Loans***"), and (y) upon entry of the Final DIP Order, an aggregate principal amount of Existing First Lien Obligations held by each Lender on such date shall be substituted, exchanged and deemed to be converted into Roll-Up Loans in an aggregate principal amount equal to the remaining amount of such Lender's Roll-Up Loan Amount. All Roll-Up Loans deemed made hereunder shall constitute Indebtedness owing by the Borrower hereunder to the Lenders, shall be secured by a perfected lien and security interest on all Collateral and shall constitute and qualify as Superpriority Claims, subject to (i) the priorities set forth in the DIP Order, and (ii) Permitted Liens; provided that, subject to (and without limiting) the foregoing, the Roll-Up Loans shall be secured by and entitled to the benefits of all Liens and security interests created and arising under the Loan Documents (as defined in the Pre-Petition Credit Agreement), which Liens and security interests shall, with respect to the Roll-Up Loans, remain in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, and have the same perfected status and priority, as if such Existing First Lien Obligations had not been so substituted, exchanged or deemed to be converted. In addition, subject to the terms and conditions set forth herein and in the DIP Order, as of the time any Lender's Roll-Up Loan is deemed to be made hereunder, such Roll-Up Loan shall, from and after such time, be designated as such and shall be administered hereunder and subject to the terms hereof. Amounts of Roll-Up Loans that are issued or deemed issued under this **Section 2.03** that are repaid or prepaid may not be reborrowed.

2.04 Notes. If requested by any Lender, any Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such Notes in the form attached hereto as **Exhibit A**.

2.05 Use of Proceeds. The Borrower shall use the proceeds of the Loans for purposes of the following, in each case, in accordance with the Approved Budget: (i) effectuating a sale of substantially all of the assets of the Debtor with a liquidating chapter 11 plan to follow, (ii) general corporate and working capital purposes, (iii) costs of administration of the Case, including the reasonable fees and expenses of the Borrower's advisors (subject to the Carve-Out), and (iv) payment of all reasonable and documented accrued and unpaid transaction costs, fees and expenses

with respect to this Agreement and the other Loan Documents, including the fees and expenses of professional advisors to the Administrative Agent.

SECTION 3
PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayments and Prepayments Generally; Application.

(a) There will be no scheduled repayments of principal on the Loans prior to the Maturity Date.

(b) On the Maturity Date, the Borrower shall repay the entire remaining outstanding principal balance of the Loans in full and in cash.

(c) The Obligors agree that all amounts payable hereunder or under any other Loan Document, whether in respect of any Loans, fees or interest accrued or accruing thereon, costs or expenses, or any other Obligations, shall be paid, repaid and prepaid, as the case may be, solely in Dollars pursuant to the terms of this **Section 3**. Except as otherwise provided in this Agreement, proceeds of each payment (including each repayment and prepayment of Loans) by any Obligor shall be deemed to be made ratably to the Lenders in accordance with their respective Proportionate Shares.

3.02 Interest.

(a) **Interest Generally**. The outstanding principal amount of the Loans shall accrue interest at the Interest Rate on and from the Closing Date. The Administrative Agent's determination of the Interest Rate shall be binding on the Borrower, its Subsidiaries and the Lenders in the absence of manifest error.

(b) **Default Interest**. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Applicable Margin shall increase automatically by three percent (3.0%) per annum (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "***Default Rate***"). If any Obligation is not paid when due under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) **Interest Payment Dates**. Subject to **clause (d)** immediately below, accrued interest on the Loans shall be payable in cash, in arrears, on each Payment Date with respect to the most recently completed Interest Period, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate, or any accrued interest not paid on or before the Maturity Date, shall be payable from time to time in cash on the Administrative Agent's demand until paid in full.

(d) **PIK Interest**. Any term or provision hereof to the contrary notwithstanding, so long as no Event of Default has occurred, interest accrued during any Interest Period shall be payable "in kind" ("***PIK Interest***") on the Payment Date applicable to any such Interest Period. PIK Interest shall be capitalized and added to the outstanding principal amount of the Loans on the Payment Date applicable to such Interest Period, and such PIK Interest shall be deemed to be a Loan made hereunder by the Lenders (any such Loan being a "***PIK Loan***"). The aggregate

principal amount of any PIK Loan will be equal to the amount of such PIK Interest paid "in kind" by the Borrower on the applicable Payment Date. For purposes of this Agreement and the other Loan Documents, each PIK Loan will bear interest (which shall be due and payable) in accordance with this **Section 3**. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, upon the occurrence of any Event of Default, interest on the Loans shall no longer be payable in the form of PIK Interest and all accrued and unpaid interest outstanding as of, and all interest accruing after, the occurrence of such Event of Default must be paid in cash as provided herein.

(e) **Conforming Changes**. In connection with the use or administration of One-Month Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of One-Month Term SOFR.

(f) **Compensation for Losses**. In the event of the payment of any principal of any Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), then, in any such event, the Borrower shall compensate each Lender for any loss, cost or expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this **Section 3.02(f)** shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. This **Section 3.02(f)** shall not apply with respect to Taxes other than any Taxes that represent Losses arising from any non-Tax loss, cost or expense.

3.03 Prepayments; Prepayment Premium.

(a) **Optional Prepayments**. The Borrower shall not have the right to optionally prepay, in whole or in part, the outstanding principal amount of the Loans prior to the Maturity Date.

(b) **Mandatory Prepayments**. Within five (5) Business Days of the receipt of Net Cash Proceeds from the occurrence of any Casualty Event or Asset Sale (each such date, a "***Prepayment Date***"), the Borrower shall apply an amount equal to one hundred percent (100%) of the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to such Casualty Event or Asset Sale, as the case may be, to (i) the prepayment of outstanding Loans, (ii) the payment of accrued and unpaid interest on the principal amount of the Loans being prepaid and the payment of the Exit Fee, if applicable (such aggregate amount of Exit Fee, prepaid principal and accrued interest being herein referred to as the "***Prepayment Price***"). Such Net Cash Proceeds shall be allocated to such prepayment and payments such that the full amount of the applicable Prepayment Price shall be paid with such Net Cash Proceeds.

(c) **[Reserved]**.

(d) **Application**. Proceeds of any prepayment made pursuant to **clauses (a)** or **(b)** above shall be applied in the following order of priority, with proceeds being applied to a succeeding level of priority only if amounts owing pursuant to the immediately preceding level of priority have been paid in full in cash; provided that all such prepayments made to Lenders shall be applied in accordance with their respective Proportionate Shares:

(i) first, to the payment of that portion of the Obligations payable to the Administrative Agent constituting fees, indemnities, costs, expenses, and other amounts then due and owing (including fees and disbursements and other charges of counsel payable under **Section 14.03**);

(ii) second, to the payment of that portion of the Obligations payable to the Lenders constituting fees (including Exit Fees), indemnities, expenses, and other amounts then due and owing (including fees and disbursements and other charges of counsel payable under **Section 14.03**) ratably among them in proportion to the respective amounts described in this **clause (ii)** payable to them;

(iii) third, to the payment of any accrued and unpaid interest and any fees then due and owing;

(iv) fourth, to the payment of unpaid principal of the Loans;

(v) fifth, to the payment in full of all other Obligations then due and payable to the Administrative Agent and the Lenders, ratably among them in proportion to the respective amounts described in this **clause (v)** payable to them; and

(vi) sixth, to the Borrower or such other Persons as may lawfully be entitled to or directed by the Borrower to receive the remainder.

3.04 Closing Fee. The Borrower shall pay to the Administrative Agent (for the benefit of the Lenders) a fee equal to one percent (1.00%) of the total amount of the Loan (the "***Closing Fee***"), which Closing Fee shall be due and payable on the earliest of the Maturity Date and the date the Obligations are paid in full or become due and payable. The Closing Fee shall be fully earned on the Closing Date. Upon receipt of payment from the Borrower, the Administrative Agent will promptly thereafter distribute like funds relating to any such payment to the Lenders pro rata on the basis of each Lender's Proportionate Share. Once earned by the Borrower, such Closing Fee shall be non-refundable.

3.05 Exit Fee. On the date of each payment, repayment or prepayment of all or any portion of the principal amount of any Loans, whether as a result of voluntary or involuntary, scheduled amortization (including pursuant to **Section 3.01(a)**), mandatory prepayment or repayment, acceleration or otherwise, and whether on, prior to or after the scheduled Maturity Date, the Borrower shall pay to the Administrative Agent a fully-earned and nonrefundable exit fee equal to four percent (4.00%) of the principal amount of any such Loan so paid, repaid or prepaid. Any such exit fee paid by the Borrower pursuant to this **Section 3.05** shall be hereinafter referred to as an "***Exit Fee***", shall be payable in cash on the date of such payment, repayment or prepayment by wire transfer of immediately available funds and shall be non-refundable once paid. Upon receipt of payment from the Borrower of any Exit Fee, the Administrative Agent will promptly thereafter

distribute like funds relating to any such payment to the Lenders pro rata on the basis of each Lender's Proportionate Share. Until payment in full in cash of all Obligations (other than inchoate indemnity and expense reimbursement obligations for which no claim has been made), all Exit Fees shall continue to be due and payable, including after the occurrence of the Maturity Date or any Event of Default, acceleration or otherwise.

SECTION 4
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally**. Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (New York City time) on the date on which such payment is due (each such payment made after such time on such due date shall be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments**. All such payments referenced in **clause (a)** above shall be applied as set forth in **Section 3.03(d)** above.

(c) **Non-Business Days**. If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day; provided that if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable.

4.03 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Administrative Agent, any Lender or any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations now or hereafter existing under any Loan Document, whether or not such Person shall have made any demand and although such obligations may be contingent or unmatured. Any Person exercising rights of set off hereunder agrees to promptly notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required**. Nothing contained in **Section 4.03(a)** shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of any Obligor.

(c) **Payments Set Aside**. To the extent that any payment by or on behalf of any Obligor is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent, or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

(d) To the extent permitted under applicable Law, any Participant acquiring a participation pursuant to **Section 14.05(e)** hereof (as well as any Lender acquiring a participation pursuant to **Section 3.03(e)** hereof) may exercise against the Obligors rights of setoff and counterclaim with respect to such participation as fully as if such Participant was a direct creditor of the Obligor in the amount of such participation.

SECTION 5
YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Changes in Law Generally**. If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of any Law, or any change in any applicable Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of Law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement) against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or other Recipient or shall impose on a Lender (or its lending office) or other Recipient any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender or other Recipient of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender or other Recipient under this Agreement or any other Loan Document, or subject any Lender to any Taxes on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto by an amount deemed by such Lender to be material (other than (i) Indemnified Taxes, (ii) Taxes described in **clauses (ii)** through **(iv)** of the definition of "**Excluded Taxes**" and

(iii) Connection Income Taxes), then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of any applicable Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), has had or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have reasonably been expected to achieve but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. Each Lender shall promptly notify the Borrower of any event of which it has knowledge, occurring after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder and also setting forth in reasonable detail the basis for calculating the additional amounts claimed to be owed to such Lender, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) **Delays in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs unless the Lender notifies the Borrower within two hundred seventy (270) days following the receipt by such Lender of its audited financial statements of the change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor.

(e) **Other Changes**. Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of or any change in any applicable Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which (i) such Lender's Commitment shall be suspended until such time as such Lender may again make and maintain the Loans hereunder and (ii) if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Prepayment Price applicable on such Prepayment Date in accordance with **Section 3.03(a)**.

5.03 Taxes.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5.03**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower**. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent or each Lender, timely reimburse it for the payment of any Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5**, the Borrower shall deliver to the Administrative Agent a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent, including upon request by the Administrative Agent, a copy of a receipt reasonably obtainable from such Governmental Authority evidencing such payment.

(d) **Indemnification by the Borrower**. The Borrower shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the

Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders**. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 14.05(g)** relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by (or withheld from payments to) the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **clause (e)**.

(f) **Status of Lenders**.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that, other than in the case of U.S. federal withholding Taxes, such Lender has received written notice from the Borrower advising it of the availability of such exemption or reduction and containing all applicable documentation. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent shall deliver such other documentation prescribed by applicable Law as reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(f)(ii)(A), (ii)(B),** and **(ii)(D)**) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or could materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or

the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit D-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "***U.S. Tax Compliance Certificate***") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate, substantially in the form of **Exhibit D-2** or **Exhibit D-3**, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-4** on behalf of each such direct and indirect partner.

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

such applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

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

(g) **Treatment of Certain Tax Benefits**. If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5.03** (including by the payment of additional amounts pursuant to this **Section 5.03**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5.03** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 5.03** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(g)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(g)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 5.03(g)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) **Mitigation Obligations**. If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.03**, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to

another of its offices, branches or Affiliates if, in the sole, reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(i) **Survival**. Each party's obligations under this **Section 5.03** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 6
CONDITIONS PRECEDENT

6.01 Conditions to the Borrowing of the Initial Loan on the Closing Date. The obligation of the Closing Date Lender to make the Initial Loan on the Closing Date shall be subject to the execution and delivery of this Agreement by the parties hereto, the delivery of a Borrowing Notice and the prior or concurrent satisfaction (or waiver thereof by the Administrative Agent) of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from each Obligor party to a Loan Document on the Closing Date:

(i) a copy of a good standing certificate or the equivalent thereof, dated a date reasonably close to the Closing Date, for each such Person and

(ii) a certificate, dated as of the Closing Date, duly executed and delivered by such Person's secretary or assistant secretary, managing member, general partner or equivalent, as to:

(A) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document and the Transactions, to be executed and delivered by such Person;

(B) the incumbency and signatures of those of its officers, managing member or general partner or equivalent authorized to act with respect to each Loan Document to be executed and delivered by such Person; and

(C) true and complete copies of each Organic Document of such Person and copies thereof;

which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the secretary, assistant secretary, managing member, general partner or equivalent of any such Person cancelling or amending the prior certificate of such Person.

(b) **[Reserved]**.

(c) **Closing Date Certificate**. The following statements shall be true and correct, and the Administrative Agent shall have received a certificate, dated as of the Closing Date and in form and substance satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower certifying that: (i) both immediately before and after giving effect to the Initial Loan on the Closing Date, (x) the representations and warranties set forth in each Loan Document that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct, (y) the representations and warranties set forth in each Loan Document that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects, and (z) no Event of Default has occurred and is continuing, or could reasonably be expected to result from the making of the Initial Loan being advanced, or the consummation of any Transactions contemplated to occur on the Closing Date, and (ii) all of the conditions set forth in this **Section 6.01** have been satisfied (except to the extent waived in writing by the Administrative Agent). All documents and agreements required to be appended to the certificate delivered pursuant to this **Section 6.01(c)**, if any, shall be in form and substance satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties, and shall be in full force and effect.

(d) **Delivery of Notes**. The Administrative Agent shall have received a Note in favor of each Lender evidencing such Lender's Initial Loan, duly executed and delivered by a Responsible Officer of the Borrower.

(e) **[Reserved].**

(f) **[Reserved].**

(g) **Security Documents**. The Administrative Agent shall have received executed counterparts of all Security Documents by all Obligors, each dated as of the date hereof, duly executed and delivered by each Obligor, together with:

(i) The delivery of all certificates (in the case of Equity Interests that are securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by the Borrower and each Subsidiary that are required to be pledged under any Security Document, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the UCC), confirmation and evidence satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under any Security Document has been transferred to and perfected by the Administrative Agent for the benefit of the Secured Parties in accordance with Articles 8 and 9 of the NY UCC and all Laws otherwise applicable to the perfection of the pledge of such Equity Interests;

(ii) financing statements naming each Obligor as a debtor and the Administrative Agent as the secured party, or other similar instruments, registrations, or documents, in each case suitable for filing, filed under the UCC (or equivalent Law) of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Liens of the Secured Parties pursuant to any Security Document;

(iii) UCC-3 termination statements, as may be necessary to release all Liens (other than Permitted Liens) and other rights of any Person in any collateral described in any Security Document previously granted by any Person;

(iv) evidence that all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of the Borrower (except for any Excluded Accounts) are Controlled Accounts;

(v) evidence that all such Controlled Accounts are subject to one or more account control agreements, in favor of, and satisfactory in form and substance to, the Administrative Agent; and

(vi) all Short-Form IP Security Agreements required to be provided under the Security Agreement, each dated as of the Closing Date, duly executed and delivered by the Borrower.

(h) **Lien Searches**. The Administrative Agent shall be reasonably satisfied with Lien searches regarding the Borrower and its Subsidiaries made within thirty (30) days prior to the Closing Date.

(i) **[Reserved]**.

(j) **Initial Budget**. The Administrative Agent shall have received the Initial Budget and evidence satisfactory to it that the Initial Loans shall be used for an authorized purpose pursuant to the Initial Budget.

(k) **First Day Orders**. The Administrative Agent shall be reasonably satisfied with the form and substance of the "first day orders" sought by the Borrower and entered on (or prior to) the Closing Date. The "first day orders" and all related pleadings shall have been entered by the Bankruptcy Court.

(l) **Approval of the Agreement**. The Borrower shall have filed a motion seeking approval of the Loan facilities set forth in this Agreement by no later than one (1) Business Day after the Petition Date.

(m) **Milestones**. The Administrative Agent shall have received evidence satisfactory to it that the Borrower is in compliance with the Milestones as of the Borrowing Date.

(n) **No Trustee**. No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Case.

(o) **Material Adverse Change**. No Material Adverse Change shall have occurred since the Petition Date (other than the Case and the consequences that would normally result from the commencement, continuation and prosecution of the Case).

(p) **Anti-Terrorism Laws**. The Administrative Agent shall have received, as applicable, all documentation and other information required by bank regulatory authorities

requested by the Administrative Agent or any Lender prior to the Closing Date with respect to applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

(q) **All Other Loan Documents**. The Administrative Agent shall have received all other Loan Documents in form and substance reasonably satisfactory to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, documents or instruments as the Administrative Agent and its counsel may reasonably request.

(r) **Satisfactory Legal Form**. All documents, including any attachments or appendices thereto, executed, delivered or submitted pursuant hereto by or on behalf of the Borrower or any of its respective Subsidiaries shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, documents or instruments as the Administrative Agent or its counsel may reasonably request.

(s) **Fees, Expenses, Etc**. The Administrative Agent shall have received for its account and the account of each Lender, all pre-petition and post-petition fees, costs and expenses due and payable pursuant to **Section 14.03**, including all closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' reasonable legal fees and expenses).

6.02 Conditions to Borrowing of any Delayed Draw Loans on a Delayed Draw Borrowing Date. The obligation of each Lender to make its portion of any Delayed Draw Loan on a Delayed Draw Borrowing Date shall be subject to the delivery of a Borrowing Notice as required pursuant to **Section 2.02** and the prior or concurrent satisfaction of the conditions precedent set forth below in this **Section 6.02**.

(a) **Delayed Draw Borrowing Date Certificate**. The following statements shall be true and correct, and the Administrative Agent shall have received a certificate, dated as of the Delayed Draw Borrowing Date (the "***Delayed Draw Borrowing Date Certificate***"), in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower representing, warranting and certifying that: (i) both immediately before and immediately after giving effect to the Borrowing of the Delayed Draw Loans, the representations and warranties set forth in each Loan Document (other than the representations and warranties contained in **Sections 7.04(b)** and **7.11** (as in effect immediately prior to the Amendment No. 6 Effective Date) and any substantially similar representations or warranties in the other Loan Documents), (x) that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct as of such earlier date, (y) that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date, and (z) no Event of Default has occurred and is continuing, or could reasonably be expected to result from the Borrowing of the Delayed Draw

Loans or the consummation of any Transactions contemplated to occur on the Delayed Draw Borrowing Date and (ii) all of the conditions set forth in this **Section 6.02** have been satisfied (except to the extent waived in writing by the Administrative Agent) except to the extent such condition relates to the satisfaction or approval in form or substance of any documents by the Administrative Agent; provided that, with respect to the representation, warranty and certification referenced in clauses (x) and (y) above relating to representations and warranties set forth in each Loan Document, (1) references in such representations and warranties to "the Closing Date" or "the date hereof" shall be deemed to be references to "the Delayed Draw Borrowing Date" and (2) the Borrower may supplement the schedules to this Agreement and the other Loan Documents as reasonably necessary in order for such certification to be true and correct on the Delayed Draw Borrowing Date; provided, further, that no such supplement shall be permitted if the Administrative Agent reasonably determines that the circumstance or event necessitating such supplement either (A) was the result of the occurrence and continuance of an Event of Default, or (B) constituted a Material Adverse Effect or (with respect to any supplement that does not reflect an action or transaction permitted by this Agreement) was otherwise materially adverse to the interests of the Lenders under the Loan Documents.

(b) **Approved Budget**. The Administrative Agent shall have received the most recent Approved Budget and evidence satisfactory to it that the Delayed Draw Loans shall be used for an authorized purpose pursuant to the Approved Budget.

(c) **Milestones**. The Administrative Agent shall have received evidence satisfactory to it that the Borrower is in compliance with the Milestones as of the Borrowing Date.

(d) **Final DIP Order**. The Final DIP Order shall have been entered by the Bankruptcy Court in form and substance satisfactory to the Administrative Agent and shall be in full force and effect and shall not have been vacated, stayed, reversed, overturned or modified in any respect without the written consent of the Administrative Agent.

(e) **Compliance with DIP Orders**. The Borrower shall be in compliance with the DIP Orders.

(f) **Fees, Expenses, Etc**. The Administrative Agent shall have received for its account and the account of each Lender, all pre-petition and post-petition fees, costs and expenses due and payable pursuant to **Section 14.03**, including all closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses).

SECTION 7
REPRESENTATIONS AND WARRANTIES

The Borrower and each other Obligor hereby jointly and severally represent and warrant to the Administrative Agent and each Lender that:

7.01 Power and Authority. The Borrower and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) subject to entry of the DIP Orders, has all requisite corporate or other power, and has all Governmental Approvals necessary to own or lease its assets (other than with respect to Material Intellectual Property, which

is covered exclusively in **Section 7.05(b)**) and carry on its business as now being or as proposed to be conducted, including all Healthcare Permits, other than could not reasonably be expected to materially and adversely impact the Borrower's and its Subsidiaries' business, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (iv) subject to entry of the DIP Orders, has full power, authority and legal right to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. Each Transaction to which the Borrower or any of its Subsidiaries is a party (or to which it or any of its assets or properties is subject) are within such Person's corporate or other powers and have been duly authorized by all necessary corporate action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by each Obligor and, subject to entry of the DIP Orders, constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by the Borrower or any of its Subsidiaries, subject to entry of the DIP Orders, will constitute, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights, and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. Subject to entry of the DIP Orders, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person (other than those that have been duly obtained or made and which are in full force and effect) is required in connection with the due execution, delivery or performance by, or enforcement against, the Borrower or any of its Subsidiaries of any Loan Document to which it is a party, except for such approvals, consents, exemptions, authorizations, actions or notices (including such filings and recordings that have been or will be made on the Closing Date in respect of perfecting or recording the Liens created pursuant to the Security Documents) that have been duly obtained, taken or made and that are in full force and effect. None of the Transactions will (i) violate or conflict with any Law, other than any such violation that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (ii) violate or conflict with any Organic Document of the Borrower or any of its Subsidiaries, (iii) violate or conflict with any Governmental Approval of any Governmental Authority binding upon the Borrower or any of its Subsidiaries, (iv) violate or result in a default under any Material Agreement, or (v) result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Borrower or any of its Subsidiaries. The Borrower, its Subsidiaries and their respective properties and businesses are in compliance in all material respects with all applicable Laws (including Healthcare Laws) and Governmental Approvals applicable to such Person and its properties or businesses, as the case may be.

7.04 Financial Statements; Material Adverse Change.

(a) **[Reserved]**.

(b) **[Reserved]**.

7.05 Properties.

(a) **Property Generally**. With respect to all real and personal assets and properties of the Borrower and each of its Subsidiaries (other than Intellectual Property which is covered in **clause (b)** below), the Borrower and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, or sufficient other rights in, all its real and personal property, whether tangible or intangible, material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**.

(i) **Schedule 7.05(b)(i)** contains, with respect to the Borrower and each of its Subsidiaries (set forth on a Subsidiary-by-Subsidiary basis):

(A) (1) a complete and accurate list of all applied for, issued, or registered Patents owned by or licensed to the Borrower or any of its Subsidiaries, including the jurisdiction and patent number, that qualify as Specified Material Intellectual Property, which list shall indicate if such Patent covers the manufacture or its use of one or more of the Borrower's Product offerings, including Halo (CRISPR reagents) or Eclipse (CRISPR-engineered cell lines), and (2) the list of all applied for, issued, or registered Patents licensed to the Borrower or any of its Subsidiaries, including the jurisdiction and patent number, that qualify as Material Intellectual Property, in each case to the knowledge of Borrower;

(B) a complete and accurate list of all unregistered, applied for, or registered Trademarks owned by or licensed to the Borrower or any of its Subsidiaries, including the jurisdiction, trademark application or registration number and the application or registration date, which would qualify as Specified Material Intellectual Property; and

(C) a complete and accurate list of all applied for or registered Copyrights owned by or licensed to the Borrower or any of its Subsidiaries, which would qualify as Specified Material Intellectual Property.

(ii) The Borrower or one of its Subsidiaries, as applicable, is the beneficial owner of all right, title and interest in and to such Person's Specified Material Intellectual Property that it owns (including, without limitation, the Specified Material Intellectual Property listed on **Schedule 7.05(b)(i)** as being owned by the Borrower or one of its Subsidiaries), with no breaks in chain of title and with good and marketable title, free and clear of any Liens or Claims of any kind whatsoever (other than Specified Permitted Liens), and each of the Borrower and its applicable Subsidiaries have the right to use such Specified Material Intellectual Property in the ordinary course of its respective business as currently conducted and as anticipated to be conducted. Without limiting the foregoing, and except as set forth on **Schedule 7.05(b)(ii)**:

(A) other than as permitted by **Section 9.09**, neither the Borrower nor any of its Subsidiaries, has transferred ownership of any of its Specified Material Intellectual Property, in whole or in part, to any Person who is not an Obligor;

(B) with respect to Specified Material Intellectual Property, other than (i) field of use restrictions and other restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements or (ii) as set forth on **Schedule 9.19(a)** or as permitted under **Section 9.09**, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Specified Permitted Liens), Claims or other agreements or arrangements relating to any Specified Material Intellectual Property, including any development, submission, services, research, license or support agreements, which bind, obligate or otherwise restrict the Borrower or any of its Subsidiaries with respect to any Specified Material Intellectual Property;

(C) except as set forth on **Schedule 7.05(b)**, the use by the Borrower or any of its Subsidiaries of any of its respective Specified Material Intellectual Property in connection with the Commercialization and Development of any Product or otherwise in the ordinary course of such Person's businesses does not infringe or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person that could reasonably be expected to materially adversely impact the Borrower's and its Subsidiaries' business;

(D) except as set forth on **Schedule 7.05(b)** and **Schedule 7.06**, (1) there are no pending or, to the Borrower's knowledge, threatened in writing Claims against the Borrower or any of its Subsidiaries asserted by any other Person relating to any Specified Material Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property; and (2) neither the Borrower nor any of its Subsidiaries has received any written notice from, or Claim by, any other Person that the business of the Borrower or any of its Subsidiaries, or the use of any Specified Material Intellectual Property by the Borrower or any of its Subsidiaries in connection with the Commercialization and Development of any Product, infringes upon or constitutes a misappropriation of any Intellectual Property of any such other Person in any material respect, or otherwise offers or constitutes a license of any Specified Material Intellectual Property of the Borrower or any of its Subsidiaries as a result of any such alleged or potential infringement or misappropriation;

(E) the Borrower does not have knowledge that any Material Intellectual Property is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Borrower and, without limiting the foregoing, neither the Borrower nor any of its Subsidiaries has put any other Person on notice of actual or potential infringement, violation or misappropriation of any Material Intellectual Property, and neither the Borrower nor any of its Subsidiaries has initiated the enforcement of any Claim with respect to any Material Intellectual Property;

(F) each relevant current and former employee and contractor of the Borrower and its Subsidiaries who has contributed to the creation or development of any Intellectual Property that qualifies as, or is reasonably expected to become, Material Intellectual Property has executed written confidentiality and invention assignment Contracts with the Borrower or such Subsidiary, as applicable, that irrevocably assigns to the Borrower or such Subsidiary, as applicable, or its designee, all rights of such employees and contractors to such Material Intellectual Property and any Inventions or know-how related thereto, in each case that was conceived or developed by any such employee or contractor in the course of their employment or engagement (as the case may be) by Borrower or any such Subsidiary;

(G) except for un-licensed third party Intellectual Property set forth on Schedule 7.05(b), the Obligor Intellectual Property, together with the Borrower's and its Subsidiaries' lawful use of open source, freeware and third party licensed Intellectual Property, is all of the Intellectual Property reasonably necessary for the operation of the business of the Borrower and its Subsidiaries in connection with the Commercialization and Development of Products as currently conducted or as currently contemplated to be conducted except as could not be reasonably be expected to result in a Material Adverse Effect;

(H) the Borrower and each of its Subsidiaries has made available to the Administrative Agent accurate and complete copies of all Material Agreements relating to all Specified Material Intellectual Property except for (i) any license implied by the sale of a Product and licenses for commonly available off-the-shelf software programs under which an Obligor is the licensee and (ii) licenses granted to Obligor’s customers or development partners in the ordinary course of business; and

(I) the Borrower and each of its Subsidiaries have taken reasonable precautions to protect the secrecy, confidentiality and value of its Specified Material Intellectual Property consisting of trade secrets and confidential information.

(iii) With respect to Patents that qualify as Specified Material Intellectual Property, except as set forth on **Schedule 7.05(b)(iii)**, and without limiting the representations and warranties in **Section 7.05(b)(ii)**:

(A) To Borrower’s knowledge, each of the issued claims in such Patents is valid and enforceable;

(B) each inventor named in such Patents has executed written Contracts with an Obligor or its predecessor-in-interest that properly and irrevocably assigns to such Obligor or its predecessor-in-interest all of such inventor’s rights, title and interest to any of the Inventions claimed in such Patents;

(C) all such Patents are in good standing and none of the Patents, or the Inventions claimed in any such Patent, have been dedicated to the public;

(D) except to the extent the failure to do so would not have a material adverse effect on the conduct of the business of Borrower as presently conducted, all prior art to such Patents was adequately disclosed, to the extent such disclosure is required, to the relevant patent office or, to the Borrower’s knowledge, considered by the respective patent offices during prosecution of such Patents;

(E) subsequent to the issuance of such Patents, none of the Borrower, any of its Subsidiaries or any of their respective predecessors-in-interest, has filed any disclaimer or made or permitted any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) (i) to the knowledge of the Borrower, no subject matter designated allowable or allowed by the U.S. Patent and Trademark Office of such Patents is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or

patents of any third party and have not been the subject of any interference, (ii) no such Patents are or have been the subject of any re-examination, opposition or any other post-grant proceedings, and (iii) neither the Borrower nor any of its Subsidiaries has knowledge of any basis for any such interference, re-examination, opposition, *inter partes* review, post grant review, or any other post-grant proceedings;

(G) no such Patents have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable patent office recorded with respect to any such Patents, neither the Borrower nor any of its Subsidiaries has received any written, or to its knowledge, other notice asserting that such Patents are invalid, unpatentable or unenforceable; if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) neither the Borrower nor any of its Subsidiaries has received an opinion, whether preliminary in nature or qualified in any manner, which concludes that a challenge to the validity or enforceability of any such Patents is more likely than not to succeed;

(I) to the Borrower's knowledge, neither the Borrower nor any of its Subsidiaries, nor, to the Borrower's knowledge, any of their respective agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patent and (ii) to the Borrower's knowledge, no prior owner of any Patent of the Borrower or any of its Subsidiaries, nor any of such prior owner's agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any Patent; and

(J) all maintenance fees, annuities, and the like due or payable on or with respect to any such Patents have been timely paid or the failure to so pay could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

7.06 No Actions or Proceedings.

(a) **Litigation**. Except as set forth on **Schedule 7.06(a)**, Borrower has not received notice of any litigation, investigation or proceeding pending and, to the knowledge of the Borrower, no such litigation or proceeding has been threatened in writing, with respect to the Borrower or any of its Subsidiaries by or before any Governmental Authority or arbitrator that (i) could, individually or in the aggregate, reasonably be expected to result in an Event of Default or (ii) involves this Agreement, any other Loan Document, the Transactions or any Material Intellectual Property.

(b) **Environmental Matters**. The operations and property of the Borrower and each of its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to result in Material Adverse Effect.

(c) **Labor Matters**. There are no strikes, lockouts or other material labor disputes against the Borrower or any of its Subsidiaries or, to the Borrower's knowledge, threatened in writing against or affecting the Borrower or any of its Subsidiaries, and no significant unfair labor practice complaint is pending against the Borrower or any Subsidiary or, to the knowledge of the Borrower, threatened against any of them before any Governmental Authority. Except as set forth on **Schedule 7.06(c)**, neither the Borrower nor any of its Subsidiaries is a party to any collective bargaining agreements or similar Contracts, no union representation exists on any facilities of the Borrower or any of its Subsidiaries and the Borrower and its Subsidiaries do not have any knowledge of any union organizing activities that are taking place.

7.07 Compliance with Laws and Agreements.

(a) The Borrower and each of its Subsidiaries is in compliance with all applicable Laws and all Contracts binding upon it or its property, except (other than with respect to Material Intellectual Property) where the failure to do so, could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Event of Default has occurred and is continuing, or will occur as a result of the making of any Loan hereunder.

(b) Without limiting the generality of the foregoing, the Borrower and each of its Subsidiaries is in compliance with all applicable Healthcare Laws and Healthcare Permits in each case, except where the failure to do so could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted, and neither the Borrower nor any such Subsidiary has received written notice by a Governmental Authority of any material violation (or of any investigation, audit, or other proceeding involving allegations of any violation) of any Healthcare Laws, and no such investigation, inspection, audit or other proceeding involving allegations of any such violation has been, to the knowledge of the Borrower or any Subsidiary, threatened in writing.

(c) (i) Each physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to the Borrower or any of its Subsidiaries (collectively, a "***Referral Source***") who has a direct ownership, investment or financial interest in the Borrower or any such Subsidiary paid fair market value for such ownership, investment or financial interest; (ii) any ownership or investment returns distributed to any Referral Source is in proportion to such Referral Source's ownership, investment or financial interest; and (iii) no preferential treatment or more favorable terms were or are offered to such Referral Source compared to investors or owners who are not in a position to refer patients or other businesses. Neither the Borrower nor any of its Subsidiaries, directly or indirectly, has or will guarantee a loan, make a payment toward a loan or otherwise subsidize a loan for any Referral Source including, without limitation, any loans related to financing the Referral Source's ownership, investment or financial interest in the Borrower or any such Subsidiary.

(d) Neither the Borrower nor any of its Subsidiaries is debarred or excluded from participation under any state or federal health care program, including any state or federal workers compensation programs.

(e) Neither the Borrower nor any of its Subsidiaries has received written notice by a Governmental Authority of any material violation (or of any investigation, audit, or other proceeding involving allegations of any violation) of any Healthcare Laws, and except as set forth on **Schedule 7.07(e)**, no such investigation, inspection, audit or other proceeding involving allegations of any such violation has been, to the knowledge of the Borrower, threatened in writing.

7.08 Taxes. Except as set forth on **Schedule 7.08**, the Borrower and each of its Subsidiaries has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except for local taxes not in excess of $100,000 in the aggregate for all local tax jurisdictions at any time or Taxes that are being contested in good faith by appropriate proceedings and for which, in each case, the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Obligors to the Administrative Agent or any Lender in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

7.10 Investment Company Act and Margin Stock Regulation.

(a) **Investment Company Act**. Neither the Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(b) **Margin Stock**. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, Regulation U or Regulation X.

[Reserved].

7.12 Equity Holders, Subsidiaries and Other Investments.

(a) [Reserved].

(b) The Borrower has no Subsidiaries and does not otherwise own or control, directly or indirectly, any Equity Interest in any Person.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of the Borrower and each of its Subsidiaries outstanding as of the date hereof that will remain outstanding immediately after the making of the Loans and the application of proceeds

therefrom on the Closing Date. **Schedule 7.13(b)** is a complete and correct list of all Liens granted by the Borrower and each of its Subsidiaries securing any of the Indebtedness listed on **Schedule 7.13(a)**.

7.14 Material Agreements. Set forth on **Schedule 7.14** is a complete and correct list of (i) each Material Agreement and (ii) each Contract creating or evidencing any Material Indebtedness. Aside from the commencement of the Case and any amounts that may be owed arising prior to the Petition Date, neither the Borrower nor any of its Subsidiaries is in default under any such Material Agreement or Contract creating or evidencing any Material Indebtedness, and the Borrower does not have knowledge of any default by any counterparty to such Material Agreement or Contract creating or evidencing any Material Indebtedness and there are no pending or, to the Borrower's knowledge, threatened in writing Claims against the Borrower or any of its Subsidiaries asserted by any other Person relating to any Material Agreements, including any Claims of breach or default under any such Material Agreements. Aside from the commencement of the Case and any amounts that may be owed arising prior to the Petition Date, neither the Borrower nor any of its Subsidiaries has received any information from, or Claim by, any Person that any Material Agreement is breached or is in default. There are no outstanding (and, the Borrower does not have knowledge of, any threatened in writing) disputes or disagreements with respect to any Material Agreement. Except as otherwise disclosed on **Schedule 7.14**, all Material Agreements including a grant of rights under any Intellectual Property to the Borrower or any of its Subsidiaries are in full force and effect without material modification from the form in which the same were disclosed to the Lenders.

7.15 Restrictive Agreements. Except as set forth on **Schedule 7.15**, neither the Borrower nor any of its Subsidiaries is subject to any Restrictive Agreement, except those permitted under **Section 9.11**.

7.16 Real Property. Except as set forth on **Schedule 7.16**, neither the Borrower nor any of its Subsidiaries owns or leases (as a tenant) any real property.

7.17 Pension Matters. **Schedule 7.17** sets forth a complete and correct list of, and that separately identifies, (i) all Title IV Plans, (ii) all Multiemployer Plans and (iii) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax-exempt status under Section 401 or 501 of the Code or other applicable Law so qualifies. Except for those that could not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Benefit Plan and Foreign Pension Plan is in compliance with all applicable provisions of ERISA, the Code or other applicable Law, (y) there are no existing or pending or, to the knowledge of the Borrower, threatened in writing Claims (other than routine claims for benefits in the normal course of business), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan and (z) no ERISA Event is reasonably expected to occur. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and none of the Borrower, any of its Subsidiaries nor any of their ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent

valuation date. No ERISA Event has occurred or is reasonably expected to occur in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. Neither the Borrower nor any of its ERISA Affiliates has any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Priority of Obligations; Collateral; Security Interest.

(a) **Priority of Obligations**.

(i) Pursuant to Section 364(c)(1) of the Bankruptcy Code, all Obligations shall at all times constitute an allowed Superpriority Claim in the Case with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in Sections 503(b) or 507 of the Bankruptcy Code, but in all cases subject to the Carve-Out; provided, that, pending entry of the Final DIP Order, the Superpriority Claim shall not be payable from the proceeds of Avoidance Actions;

(ii) Pursuant to Section 364(c)(2) of the Bankruptcy Code, all Obligations shall be secured by a perfected first priority lien granted to the Administrative Agent in and on all of the Collateral to the extent that such Collateral is not subject to valid, perfected and non-avoidable liens as of the Petition Date, but in all cases subject to the Carve-Out; provided, that, pending entry of the Final DIP Order, such lien of the Administrative Agent shall not extend to the proceeds of Avoidance Actions;

(iii) Pursuant to Section 364(c)(3) of the Bankruptcy Code, all Obligations shall be secured by a perfected junior priority lien to the Administrative Agent in and on all of the Collateral to the extent that such Collateral is subject to valid liens in existence as of the Petition Date that are perfected subsequent to such date as permitted by Section 546(b) of the Bankruptcy Code (the "***Permitted Pre-Petition Liens***"), but in all cases subject to the Carve-Out;

(iv) Pursuant to Section 364(d) of the Bankruptcy Code, all Obligations shall be secured by a perfected priming security interest and lien granted to the Administrative Agent (the "***Priming Liens***") in and on all of the Collateral, but in all cases subject to the Carve-Out, subordinated only to the Permitted Pre-Petition Liens;

(v) The Priming Liens shall not be subject to being treated *pari passu* with or subordinated to any other liens or security interests other than the Permitted Pre-Petition Liens; provided, that the Priming Liens shall be junior and subordinate to payment of the Carve-Out.

(b) **Collateral; Security Interest**.

(i) The Security Documents create in favor of the Administrative Agent a legal, valid, continuing, and enforceable security interest in the Collateral, the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings are in appropriate form and have been or will be filed in the appropriate offices for filing. Upon such filings and/or the obtaining of "control" (as defined in the Uniform Commercial Code), the Administrative Agent will have a perfected Lien on, and security interest in, to and under all right,

title, and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording, or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the Uniform Commercial Code) or by obtaining control, under the Uniform Commercial Code (in effect on the date this representation is made) in each case prior and superior in right to any other Person, except for Permitted Liens.

(ii) The Liens securing the Obligations are continuing, valid, binding, enforceable, non-avoidable and perfected Liens on all Collateral, and shall constitute, pursuant to Section 364(d)(1) of the Bankruptcy Code, a valid perfected first priority priming lien on all of the existing and after-acquired personal and real property, leasehold interests in real property, and tangible and intangible personal property of the Debtor, including, without limitation, all cash and cash equivalents, all surface land, accounts receivable and other receivables, inventory, equipment, machinery, parts, supplies, rolling stock, fixtures, patents, trade names, trademarks, copyrights, other general intangibles and membership interests, capital stock and Equity Interests owned by the Debtor, in each case, together with the proceeds thereof and all books and records relating thereto; provided, that, pending entry of the Final DIP Order, such Lien shall not include the proceeds of Avoidance Actions.

(iii) The Liens securing the Obligations and such Superpriority Claim (i) subject to entry of the Final DIP Order, shall not be subject to Sections 506, 510, 549, 550, or 551 of the Bankruptcy Code or the "equities of the case" exception of Section 552 of the Bankruptcy Code, (ii) shall not be subordinate to, or *pari passu* with, (w) any Lien, security interest or claim heretofore or hereinafter granted in the Case, (x) any Lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under Section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtor, and (iii) shall be valid and enforceable against any trustee or any other estate representative appointed or elected in the Case, upon the conversion of the Case to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing, and/or upon the dismissal the Case.

(iv) All of the Liens securing the Obligations shall be effective and perfected upon entry of the Interim DIP Order, without the necessity of the execution, recordation of filings by each Debtor of mortgages, intellectual property security agreements, security agreements, control agreements, pledge agreements, financing statements or other similar documents, lien notation on any certificates of title, or the possession or control by the Lender of, or over, any Collateral, as set forth in the Interim DIP Order.

7.19 Governmental Approvals.

(a) The Borrower and each of its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all Governmental Approvals, including all Healthcare Permits, necessary or required for the Borrower and each of its Subsidiaries to engage in the Commercialization and Development of their Products and otherwise conduct their respective operations and businesses in the ordinary course, except where the failure to hold any such approvals, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its

Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted.

(b) Set forth on **Schedule 7.19(b)** is a complete and accurate list of all Governmental Approvals referenced in **Section 7.19(a)** above. All such Governmental Approvals are (i) legally and beneficially owned or held exclusively by the Borrower or one of its Subsidiaries, as the case may be, free and clear of all Liens (other than Specified Permitted Liens), (ii) validly registered and on file with the applicable Governmental Authority, in compliance with all registration, filing and maintenance requirements (including any fee requirements) thereof, and (iii) valid, enforceable, in good standing, and in full force and effect with the applicable Governmental Authority in all respects. All required notices, registrations, listing, supplemental applications or notification reports (including field alerts or other reports of adverse experiences) and other required filings have been filed with the appropriate Governmental Authority, and all such filings are complete and correct and are in compliance with all applicable Laws, except, in either event, where the failure to do so, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted.

7.20 Transactions with Affiliates. Except as set forth on **Schedule 7.20**, neither the Borrower nor any of its Subsidiaries is a party to any transaction or other arrangement (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate that, after giving effect to the Closing Date, would not be permitted pursuant to **Section 9.10** hereof.

7.21 Sanctions. Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees nor, to the knowledge of the Borrower, any agents or other Persons acting on behalf of any of the foregoing (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction in violation of Sanctions or (iv) is or has ever been (within the previous five (5) years) in violation of or subject to an investigation relating to Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or indirectly, to lend, contribute or provide to, or has been or will be otherwise made available to fund, any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction in violation of Sanctions or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Administrative Agent, the Lenders and their Affiliates) of Sanctions.

7.22 Anti-Corruption. Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers or employees nor, to the knowledge of the Borrower, any agents or other Persons acting on behalf of any of the foregoing, directly or indirectly, has (i) violated or is in violation of any applicable anti-corruption Law, (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or indirectly, any Prohibited Payment or (iii) been subject to any investigation by any Governmental Authority with regard to any actual or alleged Prohibited Payment.

7.23 Deposit and Disbursement Accounts. **Schedule 7.23** contains a list of all banks and other financial institutions at which the Borrower or any of its Subsidiaries maintains deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts, and such Schedule correctly identifies the name and address of each bank or financial institution, the name in which the account is held, the type of account, and the complete account number therefor.

7.24 Royalties and Other Payments. Except as set forth on **Schedule 7.24**, neither the Borrower nor any of its Subsidiaries is obligated, pursuant to any Contract or otherwise, to pay any royalty, milestone payment, deferred payment or any other contingent payment in respect of any Product.

7.25 Non-Competes. Neither the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any of their respective directors, officers or employees is subject to an enforceable non-competition agreement that materially prohibits or will materially interfere with the Commercialization and Development of any of Product.

7.26 [Reserved]. **Initial Budget** The Debtor has prepared and delivered to the Lender an initial budget that is in form and substance satisfactory to the Administrative Agent, which reflects the Debtor's forecasted receipts and disbursements for the 13-weeks commencing on the Closing Date (such budget, the "***Initial Budget***").Each DIP Order, once entered, is in full force and effect and has not been reversed, modified, amended, stayed or vacated absent the written consent of the Administrative Agent.

(b) Upon the occurrence of the Maturity Date (whether by acceleration or otherwise), the Lenders shall, subject to the applicable provisions of the Interim DIP Order or the Final DIP Order, as applicable, by entitled to immediate payment of the Obligations, and to the enforcement of the remedies provided for under the Loan Documents in accordance with the terms thereof and such applicable DIP Order without further application to or by the Bankruptcy Court.

(c) In each case, after entry of the Interim DIP Order (and entry of the Final DIP Order when applicable), and pursuant to and to the extent provided in the applicable DIP Order, the Obligations will be secured by a valid and perfected lien on the Collateral having the priorities set forth herein.

(d) The Debtor is in compliance (i) in all material respects with all orders (other than the DIP Orders) entered by the Bankruptcy Court and (ii) with the DIP Orders, in each case, from the Petition Date.

SECTION 8
AFFIRMATIVE COVENANTS

The Obligors jointly and severally covenant and agree with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower shall furnish to the Administrative Agent (with sufficient copies for each Lender):

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) Copies of all letters of representation signed by an Obligor to its auditors and, promptly upon receipt thereof, copies of all auditor reports delivered for each fiscal quarter.

(g) Promptly after the same are released, copies of all press releases; provided that documents required to be furnished pursuant to this **Section 8.01(g)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" or on the Borrower's website.

(h) Promptly, and in any event within five (5) Business Days after receipt, by an Obligor thereof, copies of each material notice or other material correspondence received from any securities regulator or exchange to the authority of which the Borrower or any Obligor may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Borrower or any Obligor.

(i) Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower or any of its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which the Borrower or such Subsidiary, as applicable, may become subject from time to time.

(j) Promptly following any Lender's request, the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**.

(k) Within five (5) Business Days of delivery, copies of all statements, reports and notices (including board kits) made available to the Borrower's Board or holders of the Borrower's Equity Interests; provided that (i) any such material may be redacted by the Borrower to exclude information relating to the Loans or Loan Documents which would result in a conflict of interest with the Lenders with respect thereto (including with respect to repayment of the Loans) or (ii) in the good faith determination of the Borrower after consultation with legal counsel, if the delivery of such materials could be reasonably likely to result in the loss of attorney-client privilege.

(l) Within five (5) Business Days after issuance (or receipt by the Borrower or any of its Subsidiaries) thereof, (i) copies of any notice of default or event of default issued by any Person under or in respect of the Pre-Petition Credit Agreement, (ii) copies of all waivers, consents, forbearances, amendments and other modifications to or accommodations with respect to the Pre-

Petition Credit Agreement, and (iii) copies of all other notices, financial statements, reports, certificates and other documents delivered or required to be delivered under the Pre-Petition Credit Agreement.

(m) Such other information respecting the operations, properties, business, liabilities or condition (financial or otherwise) of the Obligors (including with respect to the Collateral) as the Administrative Agent may from time to time reasonably request.

(n) (i) As soon as reasonably practicable in advance of filing with the Bankruptcy Court, the Final DIP Order and all other proposed orders and pleadings related to the Loans and the Loan Documents, any Chapter 11 Plan and/or any disclosure statement related thereto and (ii) by the earlier of one Business Day prior to being filed (and if impracticable, then as soon as possible and in no event later than promptly after being filed) on behalf of the Debtor with the Bankruptcy Court or at the same time as such documents are provided by the Debtor to any statutory committee appointed in the Case or to the Chapter 11 trustee, all other notices, filings, motions, pleadings or other information concerning the financial condition of the Debtor or other Indebtedness of the Debtor or any request for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Court or Section 9019 of the Federal Rules of Bankruptcy Procedure.

(o) By no later than 5:00 p.m. (New York time) on the third Business Day of each week commencing with the first full week after the Petition Date (each such date, a "***Reporting Date***"), an updated budget, containing line items of sufficient detail to reflect the Debtor's projected cash receipts, if any, and disbursements for such 13-week period on a weekly basis, which such budget upon the approval of the Administrative Agent shall become the Approved Budget (the "***Updated Budget***"); provided, that, in the event the Administrative Agent and the Debtor do not agree on an Updated Budget, the Approved Budget shall be the then-existing Approved Budget or such Approved Budget as may be approved by the Bankruptcy Court after notice and a hearing.

(p) On each Reporting Date, (i) a report, in form and detail satisfactory to the Administrative Agent (each, a "***Variance Report***"), setting forth the Variance Period immediately preceding the date of each such delivery comparing actual cumulative reports and disbursements, respectively, for such period as set forth in the Approved Budget and shall indicate whether there are any adverse variances that exceed the allowed variances, and (ii) a certificate of a Responsible Officer of the Borrower attesting to the truth and accuracy of such Variance Report.

(q) On each Reporting Date, weekly reports listing all cash receipts and cash disbursements made during the prior week.

(r) On each Reporting Date, a report setting forth the identity of all consultants hired by the Debtor, together with their title and amount owed per pay period.

(s) On each Reporting Date, accounts payable listings as of such Reporting Date.

The Borrower hereby acknowledges that the Administrative Agent or the Lenders may not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and the Administrative Agent, the Lenders or their respective personnel may be engaged in investment and other market-related activities with respect to such Persons' securities. Notwithstanding anything to the contrary in this Agreement,

in the event that, as a result of a Public Offering, the Borrower becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act, the Borrower covenants and agrees that, except for the information required pursuant to **clauses (b)**,**(c)**, **(d)**, and **(l)** through **(s)** above, neither it, nor any Person acting on its behalf, will provide, or become obligated to provide, the Administrative Agent or any Lender or their respective representatives or agents with any other information that the Borrower reasonably believes constitutes material non-public information, unless prior thereto, such receiving Person shall have confirmed to the Borrower in writing that it consents to receive such information. The Borrower hereby acknowledges that each Lender is relying on the foregoing covenant in effecting transactions in securities of the Borrower.

8.02 Notices of Material Events. On or within five (5) Business Days (or such longer or shorter period as may be expressly set forth below) after a Responsible Officer of the Borrower first learns of or acquires knowledge with respect to any of the below events or circumstances, the Borrower shall furnish to the Administrative Agent written notice thereof (prepared in reasonable detail):

(a) The occurrence of any Default, including in respect of any Material Adverse Change or Material Regulatory Event.

(b) The occurrence of any event with respect to any property or assets of the Borrower or any of its Subsidiaries resulting in a Loss aggregating $100,000 (or the Equivalent Amount in other currencies) or more.

(c) Any Claim, action, suit, notice of violation, hearing, investigation or other proceedings pending, or to the best of the Borrower's knowledge, threatened in writing against or affecting the Borrower or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, whether made by a Governmental Authority or other Person that, if adversely determined could reasonably be expected to result in a Loss of $100,000 or more.

(d) (i) On or prior to the date of any filing by Borrower or any of its ERISA Affiliates of any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) promptly, and in any event within ten (10) days, after any Responsible Officer of Borrower or any of its ERISA Affiliates knows or has reason to know (A) that an ERISA Event has occurred or is reasonably expected to occur or (B) that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect to either of the foregoing, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto.

(e) Within thirty (30) days of the date thereof, (i) the termination of any Material Agreement other than upon expiration thereof in accordance with its terms, and (ii) the receipt by the Borrower or any of its Subsidiaries of any notice of a material breach under or in respect of any Material Agreement.

(f) The reports and notices as required by the Security Documents.

(g) Within thirty (30) days of the date thereof, notice of any material change in accounting policies or financial reporting practices by the Obligors.

(h) Notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving the Borrower or any of its Subsidiaries.

(i) Any licensing agreement or similar arrangement that, individually, exceeds $100,000 entered into by the Borrower or any of its Subsidiaries in connection with any infringement or alleged infringement of any Intellectual Property of another Person.

(j) Within thirty (30) days of the date thereof, notice of the creation, development or other acquisition of any Intellectual Property by the Borrower or any of its Subsidiaries after the date hereof and during such prior fiscal quarter for which such financial statements were delivered, which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority.

(k) Any change to the Borrower's or any of its Subsidiaries' ownership of Deposit Accounts, Securities Accounts and Commodity Accounts, by delivering to the Administrative Agent, a notice setting forth a complete and correct list of all such accounts as of the date of such change.

(l) Promptly after a Responsible Officer of any Obligor first learns of the occurrence of or existence thereof, any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect or a Material Regulatory Event.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

The Borrower hereby acknowledges that the Administrative Agent or the Lenders may not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and the Administrative Agent, the Lenders or their respective personnel may be engaged in investment and other market-related activities with respect to such Persons' securities. Notwithstanding anything to the contrary in this Agreement, in the event that, as a result of a Public Offering, the Borrower becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act, the Borrower covenants and agrees that, except for any notice required pursuant to **clause (a)** above, neither it, nor any Person acting on its behalf, will provide, or become obligated to provide, the Administrative Agent or any Lender or their respective representatives or agents with any information that the Borrower reasonably believes constitutes material non-public information, unless prior thereto, such receiving Person shall have confirmed to the Borrower in writing that it consents to receive such information. The Borrower hereby acknowledges that each Lender is relying on the foregoing covenant in effecting transactions in securities of the Borrower.

8.03 Existence; Conduct of Business. The Borrower shall, and shall cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full

force and effect its legal existence and all Governmental Approvals for the conduct of its business, in each case, except where the failure to do so could not reasonably be expected to materially and adversely impact the Borrower's and its Subsidiaries' business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Subject to the requirements of the Bankruptcy Code, the Borrower shall, and shall cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful Claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries, except (x) for local taxes not to exceed of $100,000 in the aggregate for all local tax jurisdictions at any time and (y) to the extent such Taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP, and (ii) all other lawful Claims which, if unpaid, would by Law become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries.

8.05 Insurance. The Borrower shall, and shall cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the request of the Administrative Agent, the Borrower shall furnish to the Administrative Agent from time to time: (i) full information as to the insurance carried by the Borrower and each of its Subsidiaries and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. The Borrower shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed in a manner adverse to the insured Person without at least twenty (20) days' prior written notice (ten (10) days' prior written notice for non-payment of premium) to the Borrower and the Administrative Agent. Receipt of notice of cancellation or modification of any such insurance policies or reduction of coverage or amounts thereunder shall entitle any Secured Party to renew any such policies, cause the coverage and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Borrower (payable on demand). The amount of any such expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

8.06 Books and Records; Inspection Rights. The Borrower shall, and shall cause each of its Subsidiaries to, keep proper books of record and account in which full, true and materially correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower shall, and shall cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and

reasonably inspect its properties, to reasonably examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and, if necessary after such discussions with such Obligor's officers, its independent accountants, all at such reasonable times as the Administrative Agent or the Lenders may reasonably request. The Borrower shall pay all reasonable costs and expenses of all such inspections.

8.07 Compliance with Laws and Other Obligations. The Borrower shall, and shall cause each of its Subsidiaries to, (i) comply with all applicable Laws and Governmental Approvals (including Environmental Laws and all Healthcare Laws), (ii) subject to the requirements of the Bankruptcy Code, use commercially reasonable, best efforts to remain in compliance with, and perform all obligations under or in connection with, all Material Agreements, and (iii) obtain and maintain all Governmental Approvals (including all Healthcare Permits) necessary in connection with the operation of its business and ownership of its properties (including its Commercialization and Development Activities with respect to any Product), except, in the case of clauses (i), (ii) and (iii) above, where the failure to do so, individually or in the aggregate, could not reasonably be expected to materially and adversely affect the Commercialization or Development of Products by the Company or any of its Subsidiaries, as the case may be, in the ordinary course of business as currently conducted or currently anticipated to be conducted, and (iv) only engage in the Commercialization and Development of Products within the scope of its Regulatory Approvals (including all Healthcare Permits) such that the protections of the Public Readiness and Emergency Preparedness Act, codified by 42 USC §§ 247-6d, 247-6e, apply.

8.08 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, whether tangible or intangible, necessary or useful in the proper conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

8.09 Government Approvals, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals (including all Healthcare Permits) necessary in connection with (i) the execution, delivery and performance of the Loan Documents, (ii) the consummation of the Transactions and (iii) the operation and conduct of their respective businesses and the ownership of their respective properties, except, in the case of **clause (iii)** above, where the failure to do so could not reasonably be expected to have a material and adverse impact on the Borrower's and its Subsidiaries' business.

8.10 Action under Environmental Laws. The Borrower shall, and shall cause each of its Subsidiaries to, upon becoming aware of the release of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, to restore their respective businesses, operations and properties to a condition in compliance with applicable Environmental Laws.

8.11 Use of Proceeds. The proceeds of the Loans shall be used only as provided in **Section 2.05**. Without limiting the foregoing, no part of the proceeds of the Loans shall be used,

whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulation T, Regulation U and Regulation X.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **[Reserved]**.

(b) **Further Assurances**.

(i) The Borrower shall take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement and the applicable Security Documents.

(ii) In the event that any Obligor acquires Obligor Intellectual Property during the term of this Agreement, then, upon the request of the Administrative Agent in its sole, reasonable discretion, the provisions of this Agreement and the Security Documents shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any Person, in each case from and after the date of such acquisition; and

(iii) Without limiting the generality of the foregoing, within thirty (30) days following written request from the Administrative Agent, the Borrower shall take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments, and delivering shares of stock together with undated transfer powers executed in blank) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the property of the Borrower as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to Permitted Liens and the relevant requirements of the applicable Security Documents.

(c) **Costs and Benefits**. Notwithstanding any term or provision of this **Section 8.12** to the contrary, without limiting the right of the Administrative Agent or the Lenders to require a Lien or security interest on any newly acquired assets or properties of the Borrower or any of its Subsidiaries, so long as no Event of Default has occurred and is continuing, the Borrower may make a written request to the Administrative Agent that the Lenders waive the requirements of this **Section 8.12** to provide a Lien, security interest or guaranty from, any newly acquired assets or properties, as the case may be, due to the cost or burden thereof to the Borrower and its Subsidiaries (when taken as a whole) being unreasonably excessive relative to the benefit that would inure to the Secured Parties, and describing such cost or burden in reasonable detail (and the Administrative Agent will deliver copies of any such request to the Lenders). Upon receipt of any such written notice, the Lenders shall review and consider such request in good faith and, within five (5) Business Days of receipt of such request, shall determine in their sole, but commercially reasonable, discretion whether to grant such request for a waiver, and the Administrative Agent will notify the Borrower of such determination; provided that the failure by the Administrative Agent to timely notify the Borrower of the Lenders' determination shall be deemed to be a rejection of the Borrower's request.

8.13 Termination of Non-Permitted Liens. In the event that the Borrower or any of its Subsidiaries shall obtain knowledge of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of the Borrower or any of its Subsidiaries, which Lien is not a Permitted Lien, the Borrower shall use its best efforts to promptly terminate or cause the termination of such Lien.

8.14 Intellectual Property. In the event that the Borrower or any of its Subsidiaries creates, develops or acquires Obligor Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such creation, development, or acquisition (except that any representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

8.15 Maintenance of Governmental Approvals, Contracts, Intellectual Property, Etc. The Borrower shall, and shall cause each of its Subsidiaries (to the extent applicable) to, (i) maintain in full force and effect all Governmental Approvals, Healthcare Permits, Material Intellectual Property and other rights, interest or assets (whether tangible or intangible) reasonably necessary for the Commercialization and Development of Products and the operations of such Person's business, in each case, except where the failure to do so could not reasonably be expected to materially and adversely impact the Borrower's and its Subsidiaries' business, (ii) promptly upon obtaining knowledge thereof, notify the Administrative Agent of any infringement or other violation by any Person of the Borrower's or any such Subsidiaries' Material Intellectual Property, and aggressively pursue any such infringement or other violation, except in any specific circumstance where the Borrower determines in good faith that it is not commercially reasonable to do so, (iii) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all new Material Intellectual Property created, developed, or acquired by the Borrower or any of its Subsidiaries, as the case may be, that are necessary for the operations of the business of such Person, and (iv) promptly after obtaining knowledge thereof, notify the Administrative Agent of any written Claim by any Person that the conduct of the business of the Borrower or any of its Subsidiaries (including any Commercialization or Development of any Product) has infringed upon any Intellectual Property of such Person that could materially and adversely impact the Borrower's business (including any Commercialization or Development of any Product).

8.16 ERISA and Foreign Pension Plan Compliance. The Borrower shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA or applicable Law with respect to any Plans or Foreign Pension Plans to which the Borrower or any such Subsidiary is a party as an employer.

8.17 Cash Management. The Borrower shall, and shall cause each of its Subsidiaries to:

(a) Other than with respect to any Excluded Accounts, maintain at all times all deposit accounts, disbursement accounts, investment accounts (and other similar accounts) and lockboxes located in the U.S. and held by any Obligor with a bank or financial institution, except as permitted

pursuant to **clause (c)** below, that has executed and delivered to the Administrative Agent an account control agreement, in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a "***Controlled Account***"); each such Controlled Account shall be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and each Obligor shall have granted a Lien to the Administrative Agent, for the benefit of the Secured Parties, over such Controlled Accounts;

(b) deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts receivable, Contracts or any other rights and interests (including pursuant to **clause (c)** below) into Controlled Accounts; and

(c) at any time after the occurrence and during the continuance of an Event of Default, at the request of the Administrative Agent, the Borrower shall cause all payments constituting proceeds of accounts receivable to be directed into lockbox accounts pursuant to agreements in form and substance reasonably satisfactory to the Administrative Agent.

8.18 Litigation Cooperation. The Borrower shall, and shall cause each of its Subsidiaries to make reasonably available to the Administrative Agent, its (and its Subsidiaries') officers, employees, agents, without expense to the Administrative Agent, books and records, to the extent that the Administrative Agent may deem them reasonably necessary to prosecute or defend against any third-party suit or proceeding instituted by or against the Administrative Agent or any Secured Party with respect to any Collateral, the subject of any Loan Document or relating to the Borrower or any of its Subsidiaries.

8.19 Conference Calls. At the request of the Administrative Agent, the Borrower shall cause its chief financial officer to participate in conference calls with the Administrative Agent and the Lenders to discuss, among other things, the financial condition of each Obligor and any financial or earnings reports; provided that such conference calls shall be held at reasonable times during normal business hours.

8.20 Information Rights. The Borrower shall make reasonably available to the Administrative Agent, without expense to the Administrative Agent, and subject to applicable legal privileges, material information regarding any advisors that the Borrower retains, including, without limitation, at the Administrative Agent's request, arranging for periodic and direct calls between the Administrative Agent and any of the Borrower's advisors.

8.21 First and Second Day Orders. The Borrower shall cause all proposed "first day" orders and "second day" orders submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement and reasonably acceptable to the Administrative Agent.

8.22 Certain Case Milestones. The Borrower shall cause the events listed on **Schedule 8.22** attached hereto (each a "***Milestone***", and collectively, "***Milestones***") to be satisfied in the applicable timeframes set forth on such schedule (as may be extended in writing by the Administrative Agent in its sole discretion).

8.23 Budget. The Obligors shall comply in all respects with the Approved Budget, subject to Permitted Variances.

SECTION 9
NEGATIVE COVENANTS

The Obligors jointly and severally covenant and agree with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been indefeasibly paid in full in cash:

9.01 Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) (x) the Obligations and (y) Indebtedness under the Pre-Petition Credit Agreement;

(b) Indebtedness existing on the Closing Date and set forth on **Schedule 7.13(a)**; provided that such Indebtedness is subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(c) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of the Borrower's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the ordinary course of business;

(e) [reserved];

(f) [reserved];

(g) ordinary course of business equipment financing and leasing and Capital Lease Obligations; provided that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness (inclusive of all Capital Lease Obligations) does not exceed $100,000 (or the Equivalent Amount in other currencies) in the aggregate at any time;

(h) Indebtedness under Hedging Agreements permitted by **Section 9.05(e)**;

(i) [reserved];

(j) Indebtedness consisting of the financing of insurance premiums in respect of insurance policies insuring assets or businesses of an Obligor written or arranged in such Obligor's ordinary course of business and which are payable within one year, in each case in an amount not

to exceed the amount of the applicable insurance premium in respect of any such policy plus interest and financing charges applicable thereto;

(k) Indebtedness incurred in connection with cash management services, including treasury, depository, overdraft, credit or debit card, purchasing cards, electronic funds transfer, automatic clearing house arrangements, cash pooling arrangements, netting services, merchant services and other similar arrangements of an Obligor, in each case incurred in the ordinary course of business;

(l) Indebtedness incurred under performance, surety, bid, statutory and appeal bonds, completion guarantees and other similar obligations, in each case in the ordinary course of business;

(m) Indebtedness in respect of worker's compensation, health, disability or other types of social security benefits, unemployment or other insurance obligations and reclamation and statutory obligations, in each case incurred in the ordinary course of business;

(n) Indebtedness in respect of letters of credit, bank guarantees or similar instruments for the account of the Borrower or any Subsidiary incurred in the ordinary course of business; provided that the aggregate face amount of all such letters of credit, bank guarantees or other instruments (including letters of credit outstanding on the Closing Date) shall not exceed $200,000 at any time outstanding;

(o) Indebtedness consisting of Investments permitted pursuant to **Section 9.05**;

(p) [reserved]; and

(q) [reserved].

9.02 Liens. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now or in the future owned by it or such Subsidiary, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens securing the Obligations and Permitted Pre-Petition Liens;

(b) any Lien on any property or asset of the Borrower or any of its Subsidiaries existing on the Closing Date and set forth on **Schedule 7.13(b)**; provided that (i) no such Lien shall extend to any other property or asset of the Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the Closing Date;

(c) Liens securing Indebtedness permitted under **Section 9.01(g)**; provided that such Liens are restricted solely to the collateral permitted to be secured by **Section 9.01(g)**;

(d) Liens imposed by any applicable Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' liens, materialmen and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof

in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

(e) pledges or deposits made in the ordinary course of business in connection with (i) real property leases entered into in the ordinary course of business, (ii) obligations in respect of workers' compensation, unemployment insurance or other similar social security legislation, to the extent permitted pursuant to **Section 9.01(m)**, or (iii) obligations in respect of surety or appeal bonds, bid or performance bonds, or other obligations of a like nature, to the extent permitted pursuant to **Section 9.01(l)**;

(f) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(g) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any applicable Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or any of their Subsidiaries;

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to applicable Law; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any applicable Law, which, in the aggregate for **clauses (i)**, **(ii)** and **(iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or its Subsidiaries;

(i) bankers' liens, rights of setoff and similar Liens incurred on deposits made to a bank on deposit accounts to the extent permitted to be made hereunder in the ordinary course of business;

(j) any judgment Lien not constituting an Event of Default;

(k) interests of lessors and sublessors under operating leases, interests of licensors or sublicensors under licenses agreements, and with respect to any realty occupied by any Obligor or any of its Subsidiaries, all easements, rights of way, reservations, licenses, encroachments, variations and similar restrictions, charges and encumbrances on title that, in any such case or event, do not secure monetary obligations and do not materially impair the use of such property for its intended purposes;

(l) Liens on cash held on deposit to secure letters of credit, bank guarantees or similar instruments permitted under **Section 9.01(n)** in an amount not to exceed the face amount of such

letters of credit, bank guarantees or similar instruments, so long as such cash is held in segregated accounts maintained with the issuers of such letters of credit, bank guarantees or similar instruments;

(m) [reserved]; and

(n) Liens securing Indebtedness permitted by **Section 9.01(j)**; provided that such Lien shall be solely limited to the applicable insurance policies, supporting documentation relating thereto and the Obligor's right to receive proceeds under such insurance policy with respect to which such Indebtedness has been incurred.

Any term or provision of this **Section 9.02** to the contrary notwithstanding, no Lien otherwise permitted under any of the foregoing **clauses (b)** through **(h)** and **clauses (j)** through **(n)** shall apply to any Material Intellectual Property.

9.03 Fundamental Changes, Acquisitions, Etc. The Borrower shall not, and shall not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any Disqualified Equity Interests, (iv) effect any Public Offering or (v) make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except as permitted pursuant to an order of the Bankruptcy Court.

9.04 Lines of Business. The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the Closing Date by such Persons or a business reasonably related or ancillary thereto or a reasonable extension thereof.

9.05 Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the Closing Date and identified on **Schedule 9.05**;

(b) [reserved];

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) Investments consisting of security deposits with utilities and landlords to secure office space and other like Persons made in the ordinary course of business;

(i) [reserved];

(j) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(k) [reserved];

(l) advances and extensions of credit (including to trade creditors) in the nature of trade payables made in connection with the purchases of goods or services in the ordinary course of business;

(m) [reserved];

(n) [reserved]; and

(o) [reserved].

9.06 Restricted Payments. The Borrower shall not, and shall not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment.

9.07 Payments of Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, and (ii) any other payments permitted pursuant to the DIP Orders and the Approved Budget.

9.08 Change in Fiscal Year. The Borrower shall not, and shall not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the Closing Date.

9.09 Sales of Assets, Etc. Except as set forth below, the Borrower shall not, and shall not permit any of its Subsidiaries to (i) sell, lease, transfer, or otherwise dispose of any of its assets or property (including accounts receivable, Intellectual Property or Equity Interests of Subsidiaries), (ii) grant or enter into any outbound licenses of Material Intellectual Property (or enter into any Contracts or agreements related thereto), or (iii) forgive, release or compromise any amount owed to the Borrower or such Subsidiary, in each case, in one transaction or series of transactions (any thereof, an "**Asset Sale**"):

(a) sales of inventory in the ordinary course of its business on ordinary business terms;

(b) the forgiveness, release or compromise of any amount owed to any Obligor or Subsidiary in the ordinary course of business;

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved]**;**

(g) the sale, assignment, transfer, disposition or discount, in each case, without recourse, of accounts receivable arising in the ordinary course of business that have been written down by the Borrower acting in good faith and consistent with its historical collection practices;

(h) any dispositions as a result of any involuntary loss, damage or destruction of property as a result of a Casualty Event or transfers of property to insurance companies in exchange for casualty insurance proceeds;

(i) [reserved];

(j) the lapse of issued Patents, issued Trademarks and issued Copyrights of Borrower and its Subsidiaries to the extent such issued Patents, issued Trademarks and issued Copyrights do not qualify as Material Intellectual Property and are not in the good faith judgment of the Borrower useful to, or required in, the conduct of the business of the Obligors or any of their Subsidiaries;

(k) the abandonment or other disposition of a lease or sublease of real property that is, in the commercially reasonable judgment of the Borrower, not used or useful in the conduct of the business of the Obligors or any of their Subsidiaries;

(l) [reserved]; and

(m) [reserved].

9.10 Transactions with Affiliates. The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions or arrangements with, any of its Affiliates, except:

(a) [reserved];

(b) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of the Borrower or any of its Subsidiaries in the ordinary course of business;

(c) [reserved]; and

(d) any other transaction of any Obligor or any of its Subsidiaries (including the issuance and sale of Qualified Equity Interests) that is (i) otherwise permitted by this Agreement, (ii) entered into in the ordinary course of business, (iii) on fair and reasonable terms that are no less favorable (including with respect to the amount of cash or other consideration receivable or payable in connection therewith) to such Obligor or such Subsidiary, as applicable, than it could obtain in an arm's-length transaction with a Person that is not an Affiliate of such Obligor or such Subsidiary and (iv) of the kind which would be entered into by a prudent Person in the position of such Obligor or such Subsidiary, as applicable, with another Person that is not an Affiliate of such Obligor or such Subsidiary, as applicable.

9.11 Restrictive Agreements. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement

other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) customary restrictions and conditions contained in agreements relating to an Asset Sale permitted pursuant to **Section 9.09**; provided that such restrictions and conditions apply only to the Subsidiary or property or asset that is to be sold and were not created or imposed in contemplation of this Agreement, (iii) restrictions and conditions imposed by any agreement relating to Permitted Indebtedness that is secured by a Permitted Lien so long as such restrictions or conditions apply only to the property or assets securing such Permitted Indebtedness and were not created or imposed in contemplation of this Agreement, (iv) [reserved], (v) customary provisions in leases and subleases entered into in compliance with **Section 9.13** restricting the assignment thereof or restricting the grant of Liens in such lease or sublease, (vi) restrictions on pledges or deposits made in the ordinary course of business in connection with leases or obligations permitted pursuant to **Section 9.02(e)**, and (vii) Restrictive Agreements set forth on **Schedule 7.15**; provided further that, any term or provision of the foregoing notwithstanding, no such Restrictive Agreement otherwise permitted under this Section shall be permitted in the event it in any way restricts, prohibits or otherwise prevents (x) the execution, delivery and performance of the Obligations or any Secured Party's rights or remedies in respect thereof, (y) the exercise of remedies by the Administrative Agent against the Borrower or any Subsidiary following an Event of Default as contemplated by the Loan Documents or (z) the performance of the obligations of the Borrower pursuant to **Section 8.12** hereof.

9.12 Modifications of Organic Documents. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document that could reasonably be expected to adversely affect any Obligations or any interests, rights or remedies of any Secured Party in respect of the Loan Documents; or

(b) (i) take or omit to take any action that results in the termination of, or permits any other Person to terminate, any Material Agreement or Material Intellectual Property; or (ii) take any action that permits any Material Agreement or Material Intellectual Property to be terminated by any counterparty thereto prior to its stated date of expiration.

9.13 Sales and Leasebacks. Except as disclosed on **Schedule 9.13**, the Borrower shall not, and shall not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to sell or transfer to any other Person and (ii) which such Person intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.14 Hazardous Material. The Borrower shall not, and shall not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

9.15 Accounting Changes. The Borrower shall not, and shall not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP.

9.16 Compliance with ERISA. Neither Borrower nor any of its ERISA Affiliates shall cause or suffer to exist (i) any event that could reasonably be expected to result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that, in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries shall cause or suffer to exist any event that could reasonably be expected in the imposition of a Lien with respect to any Benefit Plan.

9.17 Inconsistent Agreements. The Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into any Contract containing any provision that would (i) cause a Default hereunder or be violated or breached by such Person hereunder or by the performance by such Person of any of its obligations hereunder or under any other Loan Document, (ii) prohibit any such Person from granting to the Administrative Agent and the Lenders a Lien on any of its assets pursuant hereto or any other Loan Document or (iii) create or permit to exist or become effective any Lien or restriction on the ability of any such Person to (x) make Restricted Payments, pay dividends or make other distributions to the Borrower or any of its Subsidiaries, or pay any Indebtedness owed to the Borrower, (y) make loans or advances to the Borrower or any of its Subsidiaries or Guarantee Indebtedness of the Borrower or any of its Subsidiaries, or (z) transfer any of its assets or properties to the Borrower.

9.18 Sanctions; Anti-Corruption Use of Proceeds. The Borrower shall not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (B) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as Administrative Agent, Lender, underwriter, advisor, investor, or otherwise).

9.19 Inbound and Outbound Licenses.

(a) **Inbound Licenses.** Except for inbound licenses, collaboration arrangements and related agreements disclosed on **Schedule 9.19(a)** and **Schedule 7.05(b)(ii)(D)**, the Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or become or remain bound by any inbound license agreement (or similar arrangement).

(b) **Outbound Licenses.** Except for outbound licenses and related agreements disclosed on **Schedule 9.19(b)**, the Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or become or remain bound by any outbound license of Material Intellectual Property that is necessary or required in the ordinary course of business for the Commercialization and Development of the Products of the Borrower or any of its Subsidiaries.

9.20 Carve-Out.

(a) The Borrower shall not, and shall not permit any of its Subsidiaries to, use any portion of the Carve-Out or any portion of the Collateral or the proceeds thereof for the payment of the fees and expenses of any Person incurred in challenging, or in relation to any investigation

(except as set forth in the DIP Orders), litigation, objection or challenge of (i) the Liens or claims of the Administrative Agent or any Lender, (ii) any claim or cause of action against the Administrative Agent, any Lender or of their respective Affiliates, including any claim under Chapter 5 of the Bankruptcy Code, and (iii) any claims or challenges relating to the allocation of value as between encumbered and unencumbered assets (if any).

(b) The Borrower shall not, and shall not permit any of its Subsidiaries to, use any portion of the Carve-Out, any portion of the Loans or any portion of the Collateral or any proceeds thereof in connection with preventing, hindering or delaying the Administrative Agent's or any Lender's enforcement or realization upon the Collateral once an Event of Default has occurred and is continuing.

9.21 No Subsidiaries. The Borrower shall not have, form, create, organize, incorporate or acquire any Subsidiaries, conduct any business or hold any assets through any Subsidiary or otherwise own or control, directly or indirectly, any Equity Interest in any Person.

SECTION 10
FINANCIAL COVENANTS

10.01 [Reserved].

10.02 [Reserved].

SECTION 11
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an "***Event of Default***":

(a) **Principal or Interest Payment Default**. The Borrower shall fail to pay any principal of or interest on the Loans, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.

(b) **Other Payment Defaults**. Any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) **Representations and Warranties**. Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier, or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants**. Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Sections 8.01, 8.02**, **8.03** (with respect to the Borrower's existence) **8.11**, **8.12**, **8.21**, **8.22**, **8.23**, **Section 9**, or **Section 10**.

(e) **Other Covenants**. Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)**, **11.01(b)** or **11.01(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

(f) **Payment Default on Other Indebtedness**. Any Obligor or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness; provided that this **Section 11.01(f)** shall not apply to Indebtedness to the extent the holders of such Indebtedness are not exercising, and are not permitted by operation of Law to exercise, remedies with respect to such Indebtedness or the collateral pledged in support thereof.

(g) **Other Defaults on Other Indebtedness**. (i) Any material breach of, or "event of default" or similar event under, any Contract governing any Material Indebtedness shall occur, or (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this **Section 11.01(g)** shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness or (y) Indebtedness to the extent the holders of such Indebtedness are not exercising, and are not permitted by operation of Law to exercise, remedies with respect to such Indebtedness or the collateral pledged in support thereof.

(h) **Judgments**. One or more judgments for the payment of money in an aggregate amount in excess of $100,000 (or the Equivalent Amount in other currencies) shall be rendered against the Borrower or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of thirty (30) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment.

(i) **ERISA and Pension Plans**. An ERISA Event shall have occurred that, in the opinion of the Administrative Agent, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $100,000 since the Closing Date.

(j) **Change of Control**. A Change of Control shall have occurred.

(k) **Material Adverse Change, Etc**. A Material Adverse Change, Material Adverse Effect or Material Regulatory Event shall have occurred.

(l) **Impairment of Security, Etc.** If any of the following events occurs, and with respect to the following **clause (i)**, other than as a result of the acts or omissions of the Administrative Agent or any Lender: (i) any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) to the extent perfection is required herein or therein, (ii) except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason cease to be in full force and effect, or (iii) any Obligor shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document.

(m) **Budget, Milestones, Bankruptcy Court, Etc**.

(i) the Debtor deviates from the Approved Budget in any way that is greater than the Permitted Variances.

(ii) The Debtor fails to satisfy any of the Milestones.

(iii) (x) The Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or the Debtor shall file a motion or other pleading seeking the dismissal of the Cases under Section 1112 of the Bankruptcy Code or otherwise without the consent of the Administrative Agent or (y) a trustee under Chapter 11 of the Bankruptcy Code or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in the Case.

(iv) Except as set forth in the DIP Orders, as applicable: (x) an application shall be filed by the Debtor for the approval of any other Superpriority Claim (and the motion seeking approval of the Loan Documents and entry of the DIP Orders shall not constitute such an application) or (y) an order of the Bankruptcy Court shall be entered granting any other Superpriority Claim in the Cases that is *pari passu* with or senior to the claims of the Administrative Agent against the Debtor hereunder or under any of the other Loan Documents or (z) the Debtor shall permit there to arise or otherwise be granted any such *pari passu* or senior Superpriority Claim.

(v) The Bankruptcy Court shall enter an order or orders (other than the DIP Orders) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code: (x) to permit any creditor to foreclose (or the granting to such creditor of a deed in lieu of foreclosure or the like) on any Collateral, (y) with respect to any lien of or the granting of any lien on any Collateral to any federal, state or local governmental or environmental authority or regulatory agency or (z) to permit other actions that would have a Material Adverse Effect on the Debtor or its estate.

(vi) (w) An order of the Bankruptcy Court (or any appellate court) shall be entered reversing, amending, supplementing, staying for a period of seven days or more, vacating or otherwise amending, supplementing or modifying the Interim DIP Order or the Final DIP Order, or the Debtor shall apply for the authority to do so, in each case in a manner that is adverse to any Lender, without the prior written consent of the Administrative Agent, (x) the Interim DIP Order (prior to the entry of the Final DIP Order) or Final DIP Order (at all times thereafter) shall cease

to comply with the DIP Orders in any material respect, (y) the Debtor shall fail to comply with the DIP Orders in any material respect, or (z) a final non-appealable order in the Case shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Administrative Agent.

(vii) Except as permitted by the DIP Orders or as otherwise agreed to by the Administrative Agent, the Debtor shall make (or the Debtor shall apply for authority to make) any Pre-Petition Payment other than Pre-Petition Payments authorized by the Bankruptcy Court in accordance with the "first day" orders of the Bankruptcy Court as set forth in the Approved Budget.

(viii) A Chapter 11 Plan (or disclosure statement related thereto) that is not an Acceptable Chapter 11 Plan (or disclosure statement related thereto) shall be filed or confirmed in the Case or any order shall be entered which dismisses the Case and which order does not provide for termination of the Commitments and payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations as to which no claim has been asserted) or the Debtor shall seek confirmation of any such plan or entry of any such order.

(ix) The entry of an order in the Case amending, supplementing, staying, reversing, vacating or otherwise modifying (i) any Loan Document, (ii) the Interim DIP Order, (iii) the Final DIP Order, (iv) any order confirming an Acceptable Chapter 11 Plan, or (v) the Confirmation Order, in each case without the prior written consent of the Administrative Agent.

(x) The bringing of a motion or taking of any action, in each case, by the Debtor in the Case, or the entry of any order by the Bankruptcy Court in the Case (v) without the consent of the Administrative Agent, to obtain additional financing under Section 364(c) and (d) of the Bankruptcy Code that does not provide for the repayment of the Loans and all other Obligations in full in cash on the date of closing of such additional financing or to grant any Lien upon or affecting any Collateral, (w) that requests or seeks authority for or that approves or provides authority to take any other action or actions adverse to the Administrative Agent or any Lender or and of their rights and remedies hereunder or their interest in the Collateral, (x) to avoid repayment of any portion of the Loans or other Obligations, (y) to require repayment of any portion of the payments made on account of the Loans or other Obligations or (z) to limit the right of the Lenders to credit bid any portion of the Loans.

(xi) The Bankruptcy Court shall have entered an order in the Case terminating the Debtor's exclusive right to file or solicit acceptances of a plan or plan of reorganization pursuant to Section 1121 of the Bankruptcy Code.

(xii) The Debtor shall make any attempt or take any action to reduce, setoff or subordinate the Loans, Obligations or any Liens securing the Loans or other Obligations to any other Indebtedness.

11.02 Remedies. Upon the occurrence of any Event of Default under this Agreement or any DIP Order, then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may, by notice to the Borrower, without further order of or application to the Bankruptcy Court and notwithstanding the automatic stay, declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so

declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

11.03 Additional Remedies. In the event any Event of Default has occurred and is continuing, if the Borrower or any of its Subsidiaries shall be in uncured default under a Material Agreement, the Administrative Agent or the Lenders shall have the right (but not the obligation) to cause the default or defaults under such Material Agreement to be remedied (including without limitation by paying any unpaid amount thereunder) and otherwise exercise any and all rights of the Borrower or such Subsidiary, as the case may be, thereunder, as may be necessary to prevent or cure any default. Without limiting the foregoing, upon any such default, the Borrower and each of its Subsidiaries shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as may reasonably be required of the Borrower or such Subsidiary to permit the Administrative Agent and the Lenders to cure any default under the applicable Material Agreement or permit the Administrative Agent and the Lenders to take such other action required to enable the Administrative Agent and the Lenders to cure or remedy the matter in default and preserve the interests of the Administrative Agent or Lenders. Any amounts paid by the Administrative Agent or Lenders pursuant to this **Section 11.03** shall be payable on demand by Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "***Obligations***." Any amounts paid by the Administrative Agent or any such Lender or Lenders, as the case may be, pursuant to this **Section 11.03** shall be payable on demand by the Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "***Obligations***."

SECTION 12
THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to **clause (c)** below:

(a) **Appointment of the Administrative Agent**. Each of the Lenders hereby irrevocably appoints Perceptive Credit Holdings III, LP (together with any successor the Administrative Agent pursuant to **Section 12.09**) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from the Borrower or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) **Duties as Collateral and Disbursing Agent**. Without limiting the generality of **Section 12.01(a)**, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary

or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by any Obligor with, and cash and Permitted Cash Equivalent Investments held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties**. The Lenders and the Obligors hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09**, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature and do not (and are not intended to) create any fiduciary obligations, notwithstanding the use of the defined term "the Administrative Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**.

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

12.03 Use of Discretion.

(d) **No Action without Instructions**. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(e) **Right Not to Follow Certain Instructions**. Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12**, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Parties thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole reasonable discretion, contrary to any Loan Document, applicable Law or the best interests of the Administrative Agent or any of its Affiliates or Related Parties.

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this **Section 12** to the extent provided by the Administrative Agent.

12.05 Reliance and Liability.

(f) The Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any document and information and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(g) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waives and shall not assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Majority Lenders or for the actions or omissions of any of their Related Parties selected with reasonable care (other than employees,

officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender and the Borrower hereby waives and agrees not to assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action it might have against the Administrative Agent based thereon.

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

12.07 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of each Obligor and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document

or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Obligor), from and against such Lender's aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent or any of its Related Parties in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such Loan Document, or, in each case, any action taken or omitted to be taken by the Administrative Agent or any of its Related Parties under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent or any of its Related Parties to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

12.09 Resignation of the Administrative Agent.

(a) At any time upon not less than five (5) Business Days prior written notice, the Administrative Agent may resign as the "the Administrative Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent), effective on the date set forth in such notice, which effective date shall not be less than five (5) (or more than thirty (30)) days following delivery of such notice. If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right to appoint a successor to the Administrative Agent; provided that if a successor to the Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent, then the resigning Administrative Agent may, on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor to the Administrative Agent.

(b) Effective immediately upon its resignation, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor the Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Parties shall no

longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent continues to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Administrative Agent shall take such action as may be reasonably necessary to assign to the successor the Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor the Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs the Administrative Agent to release (or, in the case of **Section 12.10(b)(ii)**, release or subordinate) the following:

(a) [reserved]; and

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any property subject to a Lien described in **Section 9.02(c)** and (iii) all of the Collateral and all Obligors, upon (w) termination of the Commitments, (x) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable, (y) deposit of cash collateral with respect to all contingent Obligations, in amounts and on terms and conditions and with parties satisfactory to the Administrative Agent and each Indemnified Party that is owed such Obligations and (z) to the extent requested by the Administrative Agent, receipt by the Secured Parties of liability releases from the Obligors each in form and substance acceptable to the Administrative Agent.

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guarantees and Liens when and as directed in this **Section 12.10**.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender so long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this **Section 12** and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Proportionate Share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled

to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

SECTION 13
[RESERVED]

SECTION 14
MISCELLANEOUS

14.01 No Waiver. No failure on the part of the Administrative Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by Law.

14.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, another Obligor, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). Notwithstanding anything to the contrary in this Agreement or any other Loan Document, notices, documents, certificates and other deliverables to the Lenders by any Obligor may be made solely to the Administrative Agent and the Administrative Agent shall promptly deliver such notices, documents, certificates and other deliverables to the Lenders.

14.03 Expenses, Indemnification, Etc.

(a) **Expenses**. Each Obligor, jointly and severally, agrees to pay or reimburse (i) the Administrative Agent and the Lenders for all of their reasonable costs and expenses (including the reasonable fees and expenses of Morrison & Foerster LLP, counsel to the Administrative Agent, in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) reasonable and documented out-of-pocket costs and expenses (including printing, reproduction, document delivery, communication and travel costs, if any, and post-closing costs and expenses, including in connection with any amendments, consents, waivers or other modifications, if any) and (z) the negotiation or preparation of any modification, supplement or

waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) the Administrative Agent and the Lenders for all of their out of pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default.

(b) **Exculpation, Indemnification, etc.**

(i) In no event shall the Administrative Agent, any Lender, any successor, transferee or assignee of the Administrative Agent or any Lender, or any of their respective Affiliates, directors, officers, employees, attorneys, agents, advisors or controlling parties (each, an "***Exculpated Party***") have any obligation or responsibility for (and the Obligors jointly and severally waive any claims they may have in respect of) any Loss, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans; provided that, nothing in this **clause (i)** shall relieve any Obligor of any obligation such Obligor may have to indemnify an Indemnified Party, as provided in **clause (ii)** below, against any special, indirect, consequential or punitive damages asserted against such Indemnified Party by a third party. Each Obligor agrees, to the fullest extent permitted by applicable Law, that it will not assert, directly or indirectly, any Claim against any Exculpated Party with respect to any of the foregoing.

(ii) Each Obligor, jointly and severally, hereby indemnifies the Administrative Agent, each Lender, each of their respective successors, transferees and assigns and each of their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding (each, a "***Proceeding***") brought by a third party or the preparation by any Indemnified Party of any defense with respect thereto arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the Transactions or any use made or proposed to be made with the proceeds of the Loans, whether or not such Proceeding is brought by any Obligor, any of its Subsidiaries, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. No Obligor shall assert any Claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. This **Section 14.03(b)** shall not apply with respect to Taxes other than any Taxes that represent Losses arising from any non-Tax Claim.

14.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document may be modified or supplemented

only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or any Commitment;

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to the Lenders;

(iii) reduce the principal of, or the rate of interest specified herein (it being agreed that waiver of the default interest shall only require the consent of Required Lenders) or the amount of interest payable in cash specified herein on any Loan, or of any fees or other amounts payable hereunder or under any other Loan Document;

(iv) amend or waive compliance with the conditions precedent to the obligations of Lenders to make Loans in Section 6.02;

(v) amend, modify, discharge, terminate or waive any Security Document if the effect is to discharge the Borrower or any Subsidiary from their respective Obligations, or release a material part of the Collateral, in each case other than pursuant to the terms of hereof and thereof; or

(vi) amend this **Section 14.04** or the definition of "**Majority Lenders**".

(c) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Majority Lenders to the Administrative Agent within ten (10) Business Days following receipt of notice thereof.

14.05 Successors and Assigns.

(a) **General**. The provisions of this Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the

provisions of **Section 14.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 14.05(e)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 14.05(h)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 14.05(f)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender**. Any Lender may at any time assign to any Person all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to any Obligor, any Affiliate of any Obligor, or any employees or directors of any Obligor at any time, and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent. Subject to the recording thereof by the Lender pursuant to **Section 14.05(d)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 14.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 14.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 14.05(e)**.

(c) **Amendments to Loan Documents**. Each of the Administrative Agent, the Lenders, the Borrower and its Subsidiaries agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Administrative Agent, the Lenders the Borrower and its Subsidiaries, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 14.05**.

(d) **Register**. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Administrative Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or any Obligor or any

of its Subsidiaries or Affiliates) (each, a "***Participant***") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender shall not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 14.05(f)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Section 5** (subject to the requirements and limitations therein including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.05(b)**; provided that such Participant agrees to be subject to the provisions of **Section 5.03(h)** as if it were an assignee under **Section 14.05(b)** above. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Sections 5.01** or **5.03** than such Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) **Participant Register**. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other Obligations under the Loan Documents (the "***Participant Register***"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, or its other Obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register

(h) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that

no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

14.06 Survival. The obligations of the Borrower under **Sections 5.01**, **5.02**, **5.03**, **14.03**, **14.05**, **14.06**, **14.09**, **14.10**, **14.11**, **14.12**, **14.13**, and **14.14** shall survive the repayment of the Obligations and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty.

14.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

14.08 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. Any signature (including, without limitation, (x) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record and (y) any facsimile or .pdf signature) hereto or to any other certificate, agreement or document related to this Agreement, and any contract formation or record-keeping, in each case, through electronic means, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

14.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York and, to the extent applicable, the Bankruptcy Code.

14.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the federal or state courts in New York, New York and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 14.10(a)** is for the benefit of the Administrative Agent and the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the

extent allowed by any applicable Law, the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process**. Nothing herein shall in any way be deemed to limit the ability of the Administrative Agent and the Lenders to serve any process or summons in any manner permitted by any applicable Law.

(c) **Waiver of Venue, Etc**. Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

14.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

14.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

14.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND SHALL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

14.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any applicable Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

14.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

14.16 Confidentiality. The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them in writing by any Obligor pursuant to this Agreement that is designated by such Obligor as confidential in accordance with its customary procedures for handling its own confidential information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) subject to an agreement to comply with the provisions of this Section, to the Administrative Agent, any other Lender, any Affiliate of a Lender or any assignee, (ii) subject to an agreement to comply with the provisions of this Section, to any actual or prospective direct or indirect counterparty to any Hedging Agreement (or any professional advisor to such counterparty), (iii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its "***Related Parties***"); provided that such Related Parties are subject to obligations of confidentiality at least as restrictive as set forth in this **Section 14.16**, (iv) upon the request or demand of any Governmental Authority or any Governmental Authority having jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any applicable Law, (vi) if requested or required to do so in connection with any litigation or similar proceeding; provided that, unless otherwise prohibited by applicable Law, court order or decree, the Administrative Agent and each Lender, as applicable, shall provide prior notice to the Obligor to allow such Obligor an opportunity to obtain a protective order, (vii) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 14.16**), (viii) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, (ix) in connection with the exercise of any remedy permitted hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating the Borrower or any of its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (xi) to any other party hereto.

14.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, 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 Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, 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 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 so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

14.18 Exit Fee. The parties hereto acknowledge and agree that, to the extent that any Exit Fee is applicable to any repayment or prepayment of principal of any Loan at any time, such Exit Fee is not intended to be a penalty assessed as a result of any such repayment or prepayment of the Loans, but rather is the product of a good faith, arm's length commercial negotiation between the Borrower and the Lenders relating to the mutually satisfactory compensation payable to the Lenders by the Borrower in respect of the Loans made hereunder. In furtherance of the foregoing, to the fullest extent permitted by applicable Law, the Obligors hereby jointly and severally waive any rights or Claims any of them may have under any such applicable Law (whether or not in effect on the Closing Date) that would prohibit or restrict the payment of the Exit Fee under any of the circumstances provided herein or in any other Loan Document, including payment after acceleration of the Loans.

14.19 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Obligors in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

14.20 USA PATRIOT Act. The Administrative Agent and the Lenders hereby notify the Borrower and its Subsidiaries that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Patriot Act***"), they are required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of the Borrower and its Subsidiaries and other information that will allow such Person to identify the Borrower or such Subsidiary in accordance with the Patriot Act.

14.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

14.22 Credit Bidding. The Debtor hereby irrevocably authorizes the Administrative Agent and each Lender to (a) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including, without limitation, under Section 363 of the Bankruptcy Code or in connection with a Chapter 11 Plan, (b) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale, transfer or other disposition thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, or (c) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by the Lender (whether by judicial action or otherwise) in accordance with applicable law.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

SYNTHEGO CORPORATION

By _____
Name: Allen Soong
Title: Chief Restructuring Officer

Address for Notices:

3696 Haven Avenue, Suite A
Redwood City, CA 94064
Attn: Accounting Department
Email: Accounting@synthego.com

ADMINISTRATIVE AGENT:

PERCEPTIVE CREDIT HOLDINGS III, LP

By: PERCEPTIVE CREDIT OPPORTUNITIES GP, LLC, its general partner

By _____
Name: Sandeep Dixit
Title: Chief Credit Officer

By _____
Name: Sam Chawla
Title: Portfolio Manager

Address for Notices:

Perceptive Credit Holdings III, LP
c/o Perceptive Advisors LLC
51 Astor Place, 10th Floor
New York, NY 10003
Attn: Sandeep Dixit
Email: Sandeep@perceptivelife.com
PCOFReporting@perceptivelife.com

LENDERS:

PERCEPTIVE CREDIT HOLDINGS III, LP

By: PERCEPTIVE CREDIT OPPORTUNITIES GP, LLC, its general partner

By _____
Name: Sandeep Dixit
Title: Chief Credit Officer

By _____
Name: Sam Chawla
Title: Portfolio Manager

Address for Notices:
Perceptive Credit Holdings III, LP
c/o Perceptive Advisors LLC
51 Astor Place, 10th Floor
New York, NY 10003
Attn: Sandeep Dixit
Email: Sandeep@perceptivelife.com
PCOFReporting@perceptivelife.com

SCHEDULE I

COMMITMENTS

INITIAL LOANS

Lender	Commitment	Proportionate Share
Perceptive Credit Holdings III, LP	$5,000,000	100%
TOTAL	**$5,000,000**	**100%**

DELAYED DRAW LOANS

Lender	Commitment	Proportionate Share
Perceptive Credit Holdings III, LP	$7,500,000	100%
TOTAL	**$7,500,000**	**100%**

ROLL UP LOANS

Lender	Commitment	Proportionate Share
Perceptive Credit Holdings III, LP	$37,500,000	100%
TOTAL	**$37,500,000**	**100%**

SCHEDULE 8.22

CASE MILESTONES

Event	Milestone Required Deadline
The Debtor and the DIP Lenders shall have executed the Stalking Horse APA.	Petition Date
The Debtor shall have filed (a) the Bid Procedures and Scheduling Motion seeking approval of (i) the bidding procedures, (ii) the Stalking Horse APA (including the bid protections contained therein), and (iii) the sale of substantially all of the Debtor's assets; and (b) the DIP Motion.	No later than one (1) Business Day following the Petition Date
The Debtor shall have obtained entry of the Interim DIP Order, in form and substance acceptable to the DIP Lenders.	No later than three (3) Business Day following the Petition Date
The Debtor shall have filed (a) an Acceptable Chapter 11 Plan (including any related disclosure statement), and (b) a motion seeking conditional approval of the disclosure statement.	No later than twenty-four (24) days following the Petition Date
The Debtor shall have obtained entry of (i) an order approving the Bidding Procedures and Scheduling Motion (including approval of the bid protections contained in the Stalking Horse APA) and (ii) the Final DIP Order, in each case in form and substance acceptable to the DIP Lenders	No later than thirty (30) days following the Petition Date
The Debtor shall have obtained entry of the order conditionally approving the disclosure statement for an Acceptable Chapter 11 Plan.	No later than forty-six (46) days following the Petition Date
The Debtor shall have held an auction, if applicable.	No later than fifty-two (52) days following the Petition Date
The Debtor shall have obtained entry of the Sale Order in form and substance acceptable to the DIP Lenders.	No later than fifty-eight (58) days following the Petition Date
The Debtor shall have consummated the sale in accordance with the Sale Order.	No later than seventy (70) days following the Petition Date
The Debtor shall have obtained entry of an order confirming an Acceptable Chapter 11 Plan.	No later than eighty-four (84) days following the Petition Date

Case 25-10823-MFW Doc 52-2 Filed 05/09/25 Page 14 of 16

The effective date of an Acceptable Chapter 11 Plan shall have occurred.	No later than eighty-eight (88) days following the Petition Date

Exhibit B

Approved Budget

SYNTHEGO CORPORATION
DIP BUDGET

DIP Budget
($ in 000s)

N1

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	13 Wk
Week Ended	5/9	5/16	5/23	5/30	6/6	6/13	6/20	6/27	7/4	7/11	7/18	7/25	8/1	Total
REVENUE														
Gross Billings	**657**	**271**	**158**	**167**	**652**	**778**	**158**	**158**	**1,503**	**271**	**158**	**219**	**158**	**5,305**
CASH FLOW														
Net A/R Collections	537	94	158	347	657	158	41	167	652	665	41	158	1,503	**5,177**
Receipts from EditCo	-	793	133	-	-	113	-	-	-	113	-	-	-	**1,152**
Total Receipts	**537**	**887**	**291**	**347**	**657**	**271**	**41**	**167**	**652**	**778**	**41**	**158**	**1,503**	**6,329**
Oper Disbursements														
Payroll/Benefits	-	860	-	860	-	860	-	860	-	860	-	860	68	**5,228**
Production	162	162	162	162	162	162	162	162	162	162	162	162	162	**2,112**
Facilities	30	92	50	91	142	30	109	80	162	30	109	80	162	**1,165**
G&A/Other Opex	105	598	105	167	135	105	194	198	310	105	194	167	176	**2,559**
Total Oper Disb	**297**	**1,713**	**317**	**1,280**	**439**	**1,157**	**466**	**1,301**	**635**	**1,157**	**466**	**1,269**	**569**	**11,064**
Operating Cash Flow	**240**	**(826)**	**(26)**	**(933)**	**218**	**(886)**	**(424)**	**(1,133)**	**17**	**(379)**	**(424)**	**(1,112)**	**934**	**(4,735)**
Cumulative	***240***	***(586)***	***(613)***	***(1,546)***	***(1,328)***	***(2,214)***	***(2,638)***	***(3,772)***	***(3,755)***	***(4,133)***	***(4,557)***	***(5,669)***	***(4,735)***	
Non-Op Disb														
Independent Director Fees	-	-	-	-	105	-	-	-	105	-	-	-	105	**315**
Taxes	-	-	-	-	-	-	-	-	-	-	-	-	28	**28**
Utility Deposit	-	65	-	-	-	-	-	-	-	-	-	-	-	**65**
UST	-	-	-	-	-	-	-	-	-	-	-	-	90	**90**
Rstrx Pro Fees / Reserve	475	500	405	330	435	310	300	255	340	210	230	210	1,755	**5,755**
Lender Pro Fees (Adeq Protect)	50	40	40	40	40	40	40	40	40	40	40	30	20	**500**
BK Estate Wind-Down Funding	-	-	-	-	-	-	-	-	-	-	-	-	700	**700**
Total Non-Op Disb	**525**	**605**	**445**	**370**	**580**	**350**	**340**	**295**	**485**	**250**	**270**	**240**	**2,698**	**7,453**
Net Cash Flow	**(285)**	**(1,431)**	**(471)**	**(1,303)**	**(362)**	**(1,236)**	**(764)**	**(1,428)**	**(468)**	**(629)**	**(694)**	**(1,352)**	**(1,764)**	**(12,188)**
Cumulative	***(285)***	***(1,716)***	***(2,188)***	***(3,491)***	***(3,853)***	***(5,089)***	***(5,853)***	***(7,282)***	***(7,750)***	***(8,378)***	***(9,073)***	***(10,424)***	***(12,188)***	
LIQUIDITY														
Cash Balance														
Beginning Cash	748	5,463	4,032	3,560	2,257	5,895	4,659	3,895	4,466	3,998	3,370	2,675	2,824	**748**
Lender Advances	5,000	-	-	-	4,000	-	-	2,000	-	-	-	1,500	-	**12,500**
Net Cash Flow	(285)	(1,431)	(471)	(1,303)	(362)	(1,236)	(764)	(1,428)	(468)	(629)	(694)	(1,352)	(1,764)	**(12,188)**
Ending Cash	**5,463**	**4,032**	**3,560**	**2,257**	**5,895**	**4,659**	**3,895**	**4,466**	**3,998**	**3,370**	**2,675**	**2,824**	**1,060**	**1,060**
Restricted Cash	225	225	225	225	225	225	225	225	225	225	225	225	225	**225**
Unrestricted Cash	**5,238**	**3,807**	**3,335**	**2,032**	**5,670**	**4,434**	**3,670**	**4,241**	**3,773**	**3,145**	**2,450**	**2,599**	**835**	**835**
DIP (Roll Up)														
Beginning Balance	-	15,000	15,000	15,000	42,500	46,500	46,500	46,500	48,500	48,500	48,500	48,500	50,000	-
Roll Up Conversion	10,000	-	-	27,500	-	-	-	-	-	-	-	-	-	**37,500**
Post-petition Advances	5,000	-	-	-	4,000	-	-	2,000	-	-	-	1,500	-	**12,500**
Ending DIP Balance	**15,000**	**15,000**	**15,000**	**42,500**	**46,500**	**46,500**	**46,500**	**48,500**	**48,500**	**48,500**	**48,500**	**50,000**	**50,000**	**50,000**

N1: This DIP Budget is a cash budget that does not include accrued but unpaid employee obligations, certain administrative expenses, or priority claims that may be owed by the Debtor as of the conclusion of this DIP Budget.

Case 25-10802-JKS Doc 53-2 Filed 05/09/25 Page 162 of 267