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

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): June 29, 2018**

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**ATHENEX, INC.**

(Exact Name of Registrant as Specified in Its Charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**001-38112**  
(Commission  
File Number)

**43-1985966**  
(I.R.S. Employer  
Identification No.)

**1001 Main Street, Suite 600  
Buffalo, NY 14203**  
(Address of principal executive offices, including zip code)

**Registrant's telephone number, including area code: (716) 427-2950**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

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**Item 1.01      Entry into a Material Definitive Agreement.*****Private Financing Transactions***

On June 29 and June 30, 2018, we entered into a series of equity and debt financing transactions with Perceptive Advisors LLC and its affiliates, or Perceptive, that will provide us with an aggregate US\$100 million for our research and development activities and other corporate purposes. We entered into a stock purchase agreement with Perceptive, or the Stock Purchase Agreement, pursuant to which we agreed to sell 2,679,528 shares of common stock at a purchase price of \$18.66 per share of common stock. The closing of the equity transaction is subject to standard closing conditions.

On June 30, 2018, we also entered into a \$50.0 million senior secured loan agreement with Perceptive, or the Loan Agreement, in conjunction with the equity transaction described above. The senior secured loan matures on the fifth anniversary from the closing date, and bears interest at a floating per annum rate equal to LIBOR (with a floor of 2%) plus 9%. We are required to make monthly interest-only payments with a bullet payment of the principal at maturity. If the senior secured loan agreement is prepaid, in whole or in part, prior to a certain time, a prepayment fee will be payable to Perceptive or any future lenders, subject to certain terms and conditions.

In connection with the Loan Agreement, we granted a warrant to Perceptive for the purchase of 425,000 shares of common stock at a purchase price of \$18.66 per share of common stock.

In connection with the above transactions, we expect to enter into a registration rights agreement with Perceptive at the closing of the equity transaction. Under the registration rights agreement, we agreed that Perceptive may demand that we register their shares of our common stock for resale under the Securities Act, and we would be obligated to effect such registration. Our registration obligations under this registration rights agreement cover all shares acquired in connection with the equity transaction or by exercise of the warrant issued with the Loan Agreement.

The foregoing description of the Stock Purchase Agreement and the Loan Agreement is a summary of the material terms thereof and is qualified in its entirety by the complete text of the actual agreements, which are filed as Exhibits 10.1 and 10.2 to this report, and the description of the terms of the Stock Purchase Agreement and the Loan Agreement is qualified in its entirety by reference to such exhibits.

***TCR-T License Agreement***

On June 29, 2018, we entered into a subscription agreement with Xiangxue Life Sciences Ltd, or XLifeSc, a wholly-owned subsidiary of Guangzhou Xiangxue Pharmaceutical Co., Ltd. or the Subscription Agreement, to establish, operate and manage a limited liability company named Axis Therapeutics Limited, or Axis Therapeutics, to offer certain goods and services worldwide except in China. At the closing of the transactions set forth in the Subscription Agreement, Axis Therapeutics will be owned 45% by XLifeSc and 55% by us. The operations of Axis Therapeutics will be funded by capital contributions of the parties.

On June 29, 2018, Axis Therapeutics entered into a license agreement with XLifeSc, which we refer to as the TCR-T License, pursuant to which XLifeSc granted Axis Therapeutics an exclusive, sublicensable right and license to use XLifeSc's proprietary TCR-engineered T Cell therapy to develop and commercialize therapeutic products for oncology indications worldwide except in China. Axis Therapeutics is responsible for all development, manufacturing and commercialization, and the related costs and expenses, of any product candidates resulting from the agreement.

The effectiveness of the Subscription Agreement and the TCR-T License is subject to certain conditions and approvals set forth therein. Upon effectiveness of the TCR-T License, Axis Therapeutics will make an upfront payment of our common stock equal to \$5.0 million to XLifeSc, and Axis Therapeutics will be required to make payments to XLifeSc worth up to \$110.0 million in aggregate upon the occurrence of certain regulatory and sales milestones to be achieved in the U.S., the EU, China and Japan. In addition, XLifeSc will pay royalty payments in the teens to Axis Therapeutics based on aggregate net sales of any products using the licensed intellectual property in China.

The term of the TCR-T License will remain in effect until the expiration of the patent rights licensed under the agreement. The agreement will terminate automatically if the shareholders agreement between XLifeSc and us is terminated. The TCR-T License also contains customary termination rights for either party, such as in the event of a breach of the agreement or the initiation of bankruptcy proceedings by the other party.

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The foregoing description of the TCR-T License is a summary of certain material terms thereof, is not complete, and is qualified in its entirety by the terms and conditions of the actual agreement, which is filed as Exhibit 10.3 to this report, and the description of the terms of the agreement is qualified in its entirety by reference to such exhibit. Certain terms of the agreement have been omitted from this Form 8-K pursuant to a Confidential Treatment Request that the Company submitted to the Securities and Exchange Commission.

#### ***Arginase License Agreement***

On June 29, 2018, we entered into a license agreement with Avalon Polytom (HK) Limited, or Polytom, an entity affiliated with Avalon Global Holdings Limited, which we refer to as the Arginase License, pursuant to which Polytom granted us an exclusive, sublicensable right and license to develop and commercialize products containing pegylated and cobalt-replaced arginase for the treatment of cancer in humans, apart from ophthalmic uses and use as eye drops, worldwide. Dr. Johnson Lau, our chief executive officer and chairman, and Dr. Manson Fok and Mr. Song-Yi Zhang, two of our directors, collectively have a controlling interest in, and serve on the board of directors of, Avalon Global Holdings Limited.

Upon effectiveness of the Arginase License, we will make an upfront payment of cash equal to \$3.0 million and common stock equal to \$2.0 million to Polytom, and we will be required to make payments to Polytom worth up to \$45.0 million in our common stock or in cash upon the occurrence of certain regulatory and sales milestones. We will also pay royalty payments in the teens based on net sales of any products utilizing the intellectual property that is the subject of the Arginase License. Such royalties will be reduced by 40% when competing generic products have 25% of the market share in the applicable country, and will be eliminated entirely when competing generic products have 50% of the market share in the applicable country.

The terms of the Arginase License shall extend for a period which may expire on a country by country basis upon the earliest to occur of either (i) the expiration of the last of the patent rights licensed under the agreement, or (ii) invalidation of substantially all of the patent rights licensed under the agreement. Notwithstanding the foregoing, after the occurrence of (i) or (ii) above, the terms of the Arginase License shall automatically be extended for consecutive one year periods subject to the same terms and conditions set forth in the agreement unless either Polytom or we gives written notice of its intention not to extend the agreement terms: (i) at least ninety days prior to the expiration of the patent rights licensed under the agreement; or (ii) as soon as practically possible in the case of an invalidation claim; and (iii) at least ninety days prior to the then current expiration date of the agreement. Prior to the expiration of the term of the agreement, both parties may terminate the agreement in whole or in part upon mutual written agreement. Subject to certain conditions, we may also terminate in whole or in part the agreement in our sole discretion upon not less than six months prior written notice of termination at any time. The agreement also contains customary termination rights for either party, such as in the event of a breach of the agreement or the initiation of bankruptcy proceedings by the other party.

The foregoing description of the Arginase License is a summary, is not complete, and is qualified in its entirety by the terms and conditions of the actual agreement, which is filed as Exhibit 10.4 to this report, and the description of the terms of the Arginase License is qualified in its entirety by reference to such exhibit. Certain terms of the Arginase License have been omitted from this Form 8-K pursuant to a Confidential Treatment Request that the Company submitted to the Securities and Exchange Commission.

#### ***HepaPOC License and Supply Agreement***

On June 29, 2018, we entered into a license and supply agreement with Avalon HepaPOC Limited, or HepaPOC, an entity affiliated with Avalon Global Holdings Limited, which we refer to as the HepaPOC License, pursuant to which HepaPOC exclusively sells to us the meter and consumable strips that can be used to detect galactose concentrations in human blood and grants us an exclusive, sublicensable right and license to use and commercialize the meter and strips for administration of liver function tests to humans taking our oncology drugs. Dr. Johnson Lau, our chief executive officer and chairman, and Dr. Manson Fok and Mr. Song-Yi Zhang, two of our directors, collectively have a controlling interest in, and serve on the board of directors of, Avalon Global Holdings Limited.

Upon effectiveness of the HepaPOC License Agreement, we will make an upfront payment of cash equal to \$0.5 million to HepaPOC, and we will be required to make payments to HepaPOC worth up to \$5.0 million in our common stock or in cash upon the occurrence of certain regulatory and sales milestones. In addition, we will pay royalty payments in single-digits based on aggregate net sales of any products utilizing the intellectual property that is the subject of the HepaPOC License.

The terms of the HepaPOC License shall extend until the date on which the last of the patent rights licensed under the agreement expires or is invalidated. Notwithstanding the foregoing, the terms of the HepaPOC license shall automatically be extended for consecutive one year periods subject to the same terms and conditions set forth herein (unless agreed otherwise) unless either party gives written notice of its intention not to extend the agreement term: (i) at least ninety days prior to the expiration date of the patent rights licensed under the agreement; or (ii) as soon as practically possible in the case of an invalidation claim; or (iii) at least ninety days prior to the then current expiration date of the agreement thereafter. Notwithstanding the foregoing, after the occurrence of (i) or (ii) above, the terms of the HepaPOC License shall automatically be extended for consecutive one year periods subject to the same terms and conditions set forth in the agreement unless either HepaPOC or we gives written notice of its intention not to extend the agreement terms: (i) at least

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ninety days prior to the expiration of the patent rights licensed under the agreement; or (ii) as soon as practically possible in the case of an invalidation claim; and (iii) at least ninety days prior to the then current expiration date of the agreement. Prior to the expiration of the term of the agreement, both parties may terminate the agreement in whole or in part upon mutual written agreement. We may also terminate in whole or in part the agreement in our sole discretion upon not less than six months prior written notice of termination at any time. The agreement also contains customary termination rights for either party, such as in the event of a breach of the agreement or the initiation of bankruptcy proceedings by the other party.

The foregoing description of the HepaPOC License is a summary, is not complete, and is qualified in its entirety by the terms and conditions of the actual agreement, which is filed as Exhibit 10.5 to this report, and the description of the terms of the HepaPOC License is qualified in its entirety by reference to such exhibit. Certain terms of the HepaPOC License have been omitted from this Form 8-K pursuant to a Confidential Treatment Request that the Company submitted to the Securities and Exchange Commission.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information provided in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

**Item 8.01 Other Events**

On July 1, 2018, we issued a press release announcing the execution of the three new license agreements as well as a series of private equity and debt financing transactions reported under Item 1.01 above. The full text of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

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## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
10.1	<a href="#"><u>Stock Purchase Agreement, dated as of June 29, 2018 by and between Athenex, Inc. and Perceptive Life Sciences Master Fund, Ltd.</u></a>
10.2	<a href="#"><u>Senior Secured Term Loan Agreement, dated as of June 30, 2018, by and between Athenex, Inc. and Perceptive Advisors LLC</u></a>
10.3^	<a href="#"><u>License Agreement dated as of June 29, 2018, by and between Xiangxue Life Sciences Ltd. and Axis Therapeutics Limited</u></a>
10.4^	<a href="#"><u>License Agreement dated as of June 29, 2018, by and between Athenex Therapeutics Limited and Avalon Polytom (HK) Limited Pegtomarginase</u></a>
10.5^	<a href="#"><u>License and Supply Agreement dated as of June 29, 2018, by and between Athenex Therapeutics Limited and Avalon HepaPOC Limited Galactose Meter and Strip</u></a>
10.6*	Form of Registration Rights Agreement
99.1	<a href="#"><u>Press Release of Athenex, Inc. dated July 1, 2018</u></a>

<sup>^</sup> Confidential treatment is requested for certain confidential portions of this exhibit pursuant to Rule 406 under the Securities Act. In accordance with Rule 406, these confidential portions have been omitted from this exhibit and filed separately with the Commission.

\* To be filed by Quarterly Report on Form 10-Q.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**ATHENEX, INC.**

By: /s/ Li Shen

Li Shen

Acting Chief Accounting Officer and Treasurer

Date: July 2, 2018

**SHARE PURCHASE AGREEMENT**

dated as of June 29, 2018

by and among

**ATHENEX, INC.,**

and

**PERCEPTIVE LIFE SCIENCES MASTER FUND, LTD.**

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## **LIST OF EXHIBITS**

Exhibit A:	Form of Officer's Certificate from the Company
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Exhibit C:	Form of Registration Rights Agreement

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**THIS SHARE PURCHASE AGREEMENT**, dated as of June 29, 2018 (this “*Agreement*”), is made by and between Athenex, Inc., a company incorporated under the laws of the State of Delaware (the “*Company*”) and Perceptive Life Sciences Master Fund, Ltd., a Cayman Islands exempted company (the “*Investor*”).

**RECITALS:**

A. **The Investment.** The Investor intends to subscribe for and purchase from the Company, and the Company intends to issue and sell to the Investor, as an investment in the Company, the securities as described herein. The securities to be purchased at the closing are shares of common stock, par value \$0.001 per share, of the Company (“*Common Stock*”).

B. **Exemption from Securities Registration.** The Parties are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the “*Securities Act*”) and the provisions of Regulation D or other applicable exemptions from registration, as promulgated by the U.S. Securities and Exchange Commission under the Securities Act.

C. **Registration Rights Agreement.** At the Closing, the Company and the Investor will enter into a Registration Rights Agreement, substantially in the form attached as Exhibit C hereto (the “*Registration Rights Agreement*”), pursuant to which the Company has agreed to provide certain registration rights with respect to the Purchased Shares issued and sold to the Investor, under the Securities Act and applicable state securities laws.

D. **Warrant.** As of the date hereof, the Company and the Investor have entered into a Warrant (the “*Warrant*”), pursuant to which the Company has agreed to issue to the Investor a warrant with the right to purchase a number of shares of Common Stock subject to the terms and conditions as set forth therein.

E. **Transaction Documents.** The term “*Transaction Documents*” refers to this Agreement, the Registration Rights Agreement the Warrant and each of the other agreements and documents entered into or delivered by the parties hereto in connection with the transactions contemplated hereby or thereby.

**NOW, THEREFORE**, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

**ARTICLE I**

**PURCHASE; PURCHASE PRICE; AND CLOSINGS**

**SECTION 1.1. Purchase.** On the terms and subject to the conditions set forth herein, the Investor will purchase from the Company, and the Company will issue and sell to the Investor, such number of shares of Common Stock equal to the quotient resulting from dividing the Aggregate Purchase Price by the Purchase Price Per Share, rounded down to the nearest whole share of Common Stock (such shares of Common Stock collectively, the “*Purchased Shares*”).

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**SECTION 1.2. Purchase Price.** The purchase price per Purchased Share (the “*Purchase Price Per Share*”) shall be an amount equal to the lower of (i) the closing price of the shares of Common Stock, on and as reported on NASDAQ, on the date hereof and (ii) the VWAP of the shares of Common Stock, on and as reported on NASDAQ, for the ten (10) Trading Days immediately prior to the date hereof (including the date hereof). The parties agree that the aggregate purchase price (the “*Aggregate Purchase Price*”) shall be US\$50,000,000. “*VWAP*” means, for any date, the price determined by the daily volume weighted average price of shares of the Common Stock for such date (or the nearest preceding date) on NASDAQ (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)). “*Trading Day*” means a day on which shares of the Common Stock are listed or quoted and traded on NASDAQ.

**SECTION 1.3. Closing.** Subject to the satisfaction (or, where permissible, waiver) of the conditions to the closing set forth in SECTION 1.4, the closing shall take place remotely via the exchange of documents and signatures (the “*Closing*”), on a date to be mutually agreed between the parties hereto in writing, and in any event simultaneously with, and subject to, the consummation of the Borrowing under the Credit Agreement (the date on which the Closing actually occurs, the “*Closing Date*”). At the Closing, the Investor shall (i) pay to the Company the Aggregate Purchase Price by wire transfer of immediately available funds in United States dollars to a bank account designated by the Company, and (ii) deliver to the Company a copy of the Registration Rights Agreement duly executed by the Investor. At the Closing, the Company shall (i) deliver to the Investor a true and complete copy of the duly passed resolutions of the board of directors of the Company (in the form of minutes or otherwise), or the relevant extracts thereof, evidencing approval of the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a named party and the consummation of the transactions contemplated hereunder and thereunder and (ii) deliver to the Investor a copy of the Registration Rights Agreement duly executed by the Company. On the Closing Date, the Company shall instruct the transfer agent for the Common Stock (the “*Transfer Agent*”) to promptly credit the Investor the Purchased Shares (and, upon request of such Investor, shall instruct the Transfer Agent to deliver stock certificates to the Investor representing the Purchased Shares),

**SECTION 1.4. Closing Conditions.**

(a) The obligation of the Investor to consummate the Closing is subject to the fulfillment prior to or contemporaneously with the Closing of each of the following conditions:

(i) no judgment, injunction, order, ruling, verdict, decree or other similar determinations or finding (a “*Governmental Order*”) by, before or under the supervision of any court, administrative agency or commission or other governmental authority or instrumentality, whether federal, state, local or foreign, or any applicable industry self-regulatory organization (each, a “*Governmental Entity*”) that would have the effect of prohibiting the Closing shall be in effect, and no lawsuit commenced by any Governmental Entity seeking to prohibit the Closing shall be pending;

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(ii) the representations and warranties of the Company set forth in SECTION 2.1 of this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date (except (A) to the extent such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such date, and (B) any representations and warranties that have “material” or “Material Adverse Effect” qualifications, in which case such representations and warranties shall be true in all respects);

(iii) the Company shall have performed in all material respects all obligations required to be performed by it at or prior to or contemporaneously with the Closing under this Agreement;

(iv) the Company shall have obtained all consents, permits, approvals, registrations and waivers necessary and appropriate for the consummation of the transactions contemplated herein and in the other Transaction Documents, all of which shall be in full force and effect;

(v) the Company shall have delivered to the Investor a duly executed (A) Officer’s Certificate in the form set forth in Exhibit A hereto and (B) Secretary’s Certificate certifying (1) the Company’s board resolutions approving this Agreement and the other Transaction Documents and the issuance of the Purchased Shares, and (2) the Company’s Certificate of Incorporation and Bylaws, each as amended through the date hereof; and

(vi) the transactions under the Credit Agreement and Guaranty (the “*Credit Agreement*”), pursuant to which the Lenders (as defined in the Credit Agreement) shall provide to the Company a senior secured term loan facility in an aggregate principal amount of US\$50,000,000, shall have been consummated in accordance with the terms and conditions thereof;

(vii) the Investor shall have received an opinion from Simpson Thacher and Bartlett LLP substantially in the form set forth in Exhibit B hereto (with changes, if any, as may be agreed by Investor acting reasonably and in good faith); and

(viii) no stop order or suspension of trading shall have been imposed or threatened in writing by any Governmental Authority or self-regulatory organization with respect to public trading in the Company’s stock.

(b) The obligation of the Company to consummate the Closing is subject to the fulfillment prior to the Closing of each of the following conditions:

(i) no Governmental Order by, before or under a Governmental Entity that would have the effect of prohibiting the Closing shall be in effect, and no lawsuit commenced by any Governmental Entity seeking to prohibit the Closing shall be pending;

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(ii) the representations and warranties of the Investor set forth in SECTION 2.2 of this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date (except to the extent such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such date); and

(iii) the Investor shall have performed in all material respects all obligations required to be performed by it at or prior to or contemporaneously with the Closing under this Agreement.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.1. Representations and Warranties of the Company. The Company represents and warrants to the Investor as of the date hereof and as of the Closing Date (except to the extent made only as of a specified date, in which case as of such date) that, except as set forth in the reports, registrations, documents, filings, statements, schedules and submissions together with any required amendments thereto filed with the U.S. Securities and Exchange Commission (the “SEC”) prior to the date of this Agreement (the “SEC Documents”):

(a) Organization and Good Standing. The Company and each other Group Company have been duly organized and are validly existing and in good standing (or the jurisdictional equivalent) under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing (or the jurisdictional equivalent) in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Due Authorization. The Company has full right, power and authority to execute and deliver the Transaction Documents and to perform its obligations thereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of the Transaction Documents and the consummation by it of the transactions contemplated thereby has been duly and validly taken. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally and to general equitable principles.

(c) Capitalization. As of the date of this Agreement, (a) the authorized share capital of the Company is US\$275,000,000, and consists of 250,000,000 shares of Common Stock, of which 63,543,559 shares of Common Stock are outstanding, and 25,000,000 shares of preferred stock, of which none is outstanding, (b) all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; (c) there are no outstanding rights (including pre-

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emptive rights), warrants, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interests in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; and (d) all of the outstanding shares of capital stock or other equity interests of each material subsidiary owned, directly or indirectly, by the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party (“*Encumbrances*”). The issuance and sale of the Purchased Shares hereunder will not obligate the Company to issue shares of Common Stock or other securities to any other Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security.

(d) **Valid Issuance.** The Purchased Shares to be issued and sold by the Company hereunder have been duly authorized and, when issued and delivered and paid for as provided herein, will be duly and validly issued, will be fully paid and non-assessable, and shall be free and clear of Encumbrances (other than those created by the Investor), except for restrictions on transfer imposed by applicable securities laws.

(e) **No Violation or Default.** Neither the Company nor any other Group Company is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any other Group Company is a party or by which the Company or any other Group Company is bound or to which any property or asset of the Company or any other Group Company is subject; or (iii) in violation of any law or statute, including laws of foreign jurisdictions, tax laws, environmental protection laws, health and pharmaceutical regulatory laws, social security laws or labor laws, or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) **No Conflicts.** The execution, delivery and performance by the Company of the Transaction Documents, the issuance and sale of the Purchased Shares and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, result in the termination, modification or acceleration of, or result in the creation or imposition of any lien, charge or encumbrance upon any property, right or asset of the Company or any other Group Company pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any other Group Company is a party or by which the Company or any other Group Company is bound or to which any property, right or asset of the Company or any other Group Company is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company or any other Group Company or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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(g) **No Consents Required.** Assuming the accuracy of the representations and warranties of the Investor set forth in SECTION 2.2, no consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required to be made or obtained by the Company for the execution, delivery and performance by the Company of this Agreement, the issuance and sale of the Purchased Shares and the consummation of the transactions contemplated by the Transaction Documents, except for those that have been made or obtained prior to the date hereof, post-Closing filings pursuant to securities laws and the rules and regulation of The NASDAQ Stock Market LLC, which the Company shall file within the applicable time periods and the registration of the Purchased Shares under the Securities Act as and when required under the Registration Rights Agreement.

(h) **Financial Statements.** As of their respective dates, the financial statements (including the related notes thereto) of the Company and its consolidated subsidiaries included in the Company's Annual Report on Form 10-K for the year ended December 31, 2017, as filed with the SEC on March 26, 2018 comply in all material respects with the applicable requirements of the Securities Act and present fairly the financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been prepared in all material aspects in conformity with generally accepted accounting principles ("GAAP") in the United States applied on a consistent basis throughout the periods covered thereby, and any supporting schedules included in the SEC Documents present fairly in all material aspects the information required to be stated therein; and the other financial information included in the SEC Documents has been derived from the accounting records of the Company and its consolidated subsidiaries and presents fairly in all material aspects the information shown thereby.

(i) **Regulatory Filings.** Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any other Group Company has failed to file with the regulatory authorities any required filing, declaration, listing, registration, report or submission with respect to the product candidates of the Company or the other Group Companies that are described or referred to in the SEC Documents; all such filings, declarations, listings, registrations, reports or submissions were in material compliance with Applicable Laws when filed; and no material deficiencies regarding compliance with Applicable Law have been asserted by any applicable regulatory authority with respect to any such filings, declarations, listings, registrations, reports or submissions.

(j) **Title to Real and Personal Property.** The Company and the other Group Companies have good and marketable title in fee simple to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and the other Group Companies, in each case free and clear of all Liens, except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and the other Group Companies or (ii) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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(k) Tax. The Company and the other Group Companies have paid all federal, state, local and foreign taxes and filed all tax returns required to be paid or filed through the date hereof except where such failure to pay or file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any other Group Company or any of their respective properties or assets. To the Company's knowledge, no tax investigation is currently pending against the Company or any other Group Company. The provisions included in the financial statements as set out in the SEC Documents included appropriate provisions required under U.S. GAAP for all taxation in respect of accounting periods ended on or before the accounting reference date to which such audited accounts relate for which the Company was then or might reasonably be expected thereafter to become or have become liable.

(l) Absence of Certain Changes. Since the date of the most recent financial statements of the Company included in the SEC Documents, (i) there has not been any change in the capital stock (other than the issuance of Common Stock upon exercise of any stock options and warrants described as outstanding in, and the grant of any options and awards under existing equity incentive plans described in, the SEC Documents), short-term debt or long-term debt of the Company or any other Group Company, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any other change or development that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect, (ii) neither the Company nor any other Group Company has entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Company and the other Group Companies taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and the other Group Companies taken as a whole (other as described in the SEC Documents); (iii) there has not been any material damage, destruction or loss, whether or not covered by insurance to any assets or properties of the Company or any Group Company, that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect, (iv) there has not been any material labor difficulties or labor union organizing activities with respect to employees of the Company or any Group Company that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect, and (v) there has not been any other event or condition of any character that has had or could be reasonably expected to have a Material Adverse Effect.

(m) Legal Proceedings. As of the date of this Agreement, (i) there are no legal, governmental or regulatory investigations, actions, demands, claims, suits, arbitrations, inquiries or proceedings ("Actions") pending to which the Company, any other Group Company or any directors, director nominees or executive officers (in their respective capacities as such) of any Group Company is a party or to which any property of the Company or any other Group Company is the subject that, individually or in the aggregate, if determined adversely to the Company or any other Group Company, would reasonably be expected to have a Material Adverse Effect; (ii) no such Actions are, to the knowledge of the Company, threatened; (iii) there are no prior, current or pending Actions that are required under the Securities Act to be described in the SEC Documents that are not so described in the SEC Documents, and (iv) there are no statutes, regulations or contracts or other documents that are required under the Securities Act to be filed as exhibits to the SEC Documents or described in the SEC Documents that are not so filed as exhibits to the SEC Documents or described in the SEC Documents.

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(n) **Material Contracts.** Each franchise, contract or other document of a character required to be described in the SEC Documents or to be filed as an exhibit to the SEC Documents under the Securities Act and the rules and regulations promulgated thereunder is so described or filed. All such agreements and contracts are valid, binding, in full force and effect and enforceable against each of the parties thereto. Neither the Company, nor, to the Company's knowledge, any other party thereto, is in material default of any of its obligations under any such agreement or contract.

(o) **Licenses and Permits.** The Company and the other Group Companies possess, and are in material compliance with the terms of, all material licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their properties or the conduct of their business as described in the SEC Documents, except where the failure to possess or make the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and neither the Company nor any other Group Company has received notice of any revocation or modification of any such material license, certificate, permit or authorization or has any reason to believe that any such material license, certificate, permit or authorization will not be renewed in the ordinary course except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and the other Group Companies (i) are, and at all times since January 1, 2017 have been, in compliance with all statutes, rules and regulations applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, storage, import, export or disposal of any product manufactured or distributed by the Company ("Applicable Laws"); and (ii) have not received any U.S. Food and Drug Administration Form 483, written notice of adverse finding, warning letter, untitled letter or other correspondence or written notice from any court or arbitrator or governmental or regulatory authority alleging or asserting non-compliance with (x) any Applicable Laws or (y) any licenses, exemptions, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws except in each case of clause (i) and clause (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, all preclinical and clinical studies conducted by or, to the Company's knowledge, on behalf of the Company to support approval for commercialization of the Company's products have been conducted by the Company, or to the Company's knowledge by third parties, in compliance with all applicable federal, state or foreign laws, rules, orders and regulations, except for such failure or failures to be in compliance which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The descriptions of the tests and preclinical and clinical studies, and results thereof, conducted by or, to the Company's knowledge, on behalf of the Company contained in the SEC Documents are accurate and complete in all material respects; and the Company has not received any oral or written notice or correspondence from the FDA or any foreign, state or local governmental body exercising comparable authority requiring the termination, suspension, or clinical hold of any tests or preclinical or clinical studies, or such written notice or correspondence from any Institutional Review Board or comparable authority requiring the termination or suspension of a clinical study, conducted by or on behalf of the Company, which termination, suspension, or clinical hold would reasonably be expected to have a Material Adverse Effect.

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(p) Compliance with Anti-Money Laundering Laws. The operations of the Company and the other Group Companies are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Organised and Serious Crimes Ordinance (Chapter 455 of the Laws of Hong Kong), the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615 of the Laws of Hong Kong), the Drug Trafficking (Recovery of Proceeds) Ordinance (Chapter 405 of the Laws of Hong Kong), the United Nations (Anti-Terrorism Measures) Ordinance (Chapter 575 of the Laws of Hong Kong), the applicable anti-money laundering statutes of all jurisdictions where the Company or any other Group Company conducts business, the applicable rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental or regulatory agency (collectively, the “*Anti-Money Laundering Laws*”) and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Company or any other Group Company with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(q) No Conflicts with Sanctions Laws. Neither the Company nor any other Group Company or any directors, officers or employees (in their respective capacity as such) of any Group Company, nor, to the knowledge of the Company, any agent acting on behalf of the Company or any other Group Company is currently the subject or the target of any sanctions administered or enforced by the U.S. government, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State and including the designation as a “specially designated national” or “blocked person”), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority (collectively, “*Sanctions*”), nor is the Company or any other Group Company located, organized or resident in a country or territory that is the subject or target of Sanctions (each, a “*Sanctioned Country*”); and the Company will not directly or indirectly use the proceeds of the sale of the Purchased Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and the other Group Companies have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(r) No Labor Disputes.

(i) The Company is not a party to or bound by any collective bargaining agreements or other agreements with labor organizations. The Company has not violated any laws, regulations, orders or contract terms, affecting the collective bargaining rights of employees, labor organizations or any laws, regulations or orders affecting employment discrimination, equal opportunity employment, or employees’ health, safety, welfare, wages and hours, which violation, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

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(ii) (A) There are no labor disputes existing, or to the Company's knowledge, threatened, involving strikes, slow-downs, work stoppages, job actions, disputes, lockouts or any other disruptions of or by the Company's employees that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect, (B) there are no unfair labor practices or petitions for election pending or, to the Company's knowledge, threatened before the National Labor Relations Board or any other federal, state, foreign or local labor commission relating to the Company's employees that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect, and (C) no demand for recognition or certification heretofore made by any labor organization or group of employees is pending with respect to the Company.

(iii) The Company is, and at all times has been, in compliance with all applicable laws respecting employment (including laws relating to classification of employees and independent contractors) and employment practices, terms and conditions of employment, wages and hours, and immigration and naturalization, except for such failure or failures to be in compliance which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. There are no material claims pending, or to the Company's knowledge threatened, against the Company before the Equal Employment Opportunity Commission or any other administrative body or in any court asserting any violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967, 42 U.S.C. §§ 1981 or 1983 or any other federal, state, foreign or local Law, statute or ordinance barring discrimination in employment.

(s) Investment Company Act. The Company is not and, after giving effect to the issuance and sale of the Purchased Shares and the application of the proceeds thereof, will not be, required to register as an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

(t) No Unlawful Payments. Neither the Company nor any other Group Company nor any director, officer, or employee (in their respective capacity as such) of the Company or any other Group Company nor, to the knowledge of the Company, any agent, acting on behalf of the Company or any Group Company has (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an intentional act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any government or regulatory official or employee, including any directors, officers and employees of any wholly or partially government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices

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Act of 1977, as amended, or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offence under the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption laws; or (iv) made, offered, promised, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company and the Group Companies have instituted, and maintain and enforce, policies and procedures designed to promote and reasonably ensure compliance with all applicable anti-bribery and anti-corruption laws.

(u) Certain Environmental Matters. The Company and the other Group Companies are currently in compliance with all, and have not since January 1, 2017 violated any, applicable federal, state, local and foreign laws (including common law), rules, regulations, requirements, decisions, judgments, decrees, orders and other legally enforceable requirements relating to pollution or the protection of human health or safety, the environment, natural resources, hazardous or toxic substances or wastes, pollutants or contaminants (collectively, “*Environmental Laws*”), except in the case that such failure to comply would not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) Accounting Controls. The Company and the other Group Companies maintain systems of “internal control over financial reporting” (as defined in Rule 13a-15(f) of the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the “*Exchange Act*”)) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company and the other Group Companies maintain internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no material weaknesses in the Company’s internal controls. The Company’s auditors and the Audit Committee of the board of directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which have adversely affected or are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal controls over financial reporting.

(w) Intellectual Property. (i) The Company or another Group Company owns or has the right to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, domain names and other source indicators, copyrights and copyrightable works (including software), know-how, trade secrets, inventions, other unpatented and/or unpatentable systems, procedures, methods, processes, proprietary or

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confidential information and all other worldwide intellectual property, industrial property and proprietary rights (collectively, “*Intellectual Property*”) material to the conduct of their respective businesses; (ii) the Company’s and the other Group Companies’ conduct of their respective businesses does not infringe, misappropriate or otherwise violate (“*Infringe*”) any Intellectual Property of any person in any material respect (other than patents), nor, to the knowledge of the Company, does the Company Infringe patents of any person, and no Action is pending, or to the knowledge of the Company, threatened in writing, alleging Infringement of Intellectual Property of any person; (iii) to the knowledge of the Company, the Intellectual Property owned by and exclusively licensed to the Company and the Group Companies is not being infringed, misappropriated or otherwise violated by any person in any material respect; (iv) no Action is pending, or to the knowledge of the Company, threatened in writing, challenging the validity, enforceability, scope, registration, ownership or use of any Intellectual Property owned by or exclusively licensed to the Company or any other Group Company (with the exception of ordinary course office actions in connection with applications for the registration or issuance of such Intellectual Property); and (v) the Company and the Group Companies take reasonable measures to maintain and protect their material Intellectual Property. All of the material licenses and sublicenses and consent, royalty or other agreements concerning Intellectual Property which are necessary for the conduct of the Company’s and/or each of its Group Company respective businesses as currently conducted to which the Company or any Group Company is a party or by which any of their assets are bound (other than generally commercially available, non-custom, off-the-shelf software application programs having a retail acquisition price of less than \$200,000 per license, and other than non-exclusive licenses granted in the ordinary course of business) (collectively, “*License Agreements*”) are valid and binding obligations of the Company or any of its Group Companies that are parties thereto and, to the Company’s knowledge, the other parties thereto, enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors’ rights generally. Neither the Company, nor, to the Company’s knowledge, any other party thereto, is in material default of any of its obligations under any such License Agreement.

(x) No “Bad Actor” Disqualification. No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) promulgated by the SEC (a “*Disqualification Event*”) is applicable to the Company or, to the Company’s knowledge, any Company Covered Person (as defined below). “Company Covered Person” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated by the SEC under the Act, any person or entity listed in the first paragraph of Rule 506(d)(1).

(y) Compliance with Listing Requirements. The Common Stock is registered pursuant to Section 12(b) of the 1934 Act and is listed on The NASDAQ Capital Markets, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the 1934 Act or removal from listing of the Common Stock from the NASDAQ Capital Markets, nor has the Company received any notification that the SEC, the NASDAQ Stock Market or the Financial Industry Regulatory Authority, Inc. is contemplating terminating such registration or quotation. The Company is in compliance in all material respects with the listing and listing maintenance requirements of the NASDAQ Capital Markets applicable to it for the continued trading of its Common Stock on the NASDAQ Capital Markets.

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(z) **No Broker's Fees.** Neither the Company nor any other Group Company is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the issuance and sale of the Purchased Shares.

(aa) **Disclosures.** As of their respective filing or furnishing dates, the SEC Documents complied in all material respects with the requirements of the Securities Act and/or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, as applicable, to the respective SEC Documents. None of the SEC Documents, at the time they were filed or furnished, nor any of the representations and warranties set forth in this Section 2.1, as qualified thereby, contained or contain (as applicable) any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein or herein, in the light of the circumstances under which they were made, not misleading.

SECTION 2.2. **Representations and Warranties of the Investor.** The Investor hereby represents and warrants as of the date hereof and as of the Closing Date to the Company that:

(a) **Organization and Good Standing.** The Investor been duly organized and is validly existing and in good standing (or the jurisdictional equivalent) under the laws of its jurisdiction of formation, and has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) **Due Authorization.** The Investor has full right, power and authority to execute and deliver the Transaction Documents and to perform its obligations thereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of the Transaction Documents and the consummation by it of the transactions contemplated thereby has been duly and validly taken. The Transaction Documents constitute the legal, valid and binding obligations of the Investor, enforceable against the Investor in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally and to general equitable principles.

(c) **No Conflicts.** The execution, delivery and performance by the Investor of the Transaction Documents, the purchase of the Purchased Shares and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, result in the termination, modification or acceleration of, or result in the creation or imposition of any lien, charge or encumbrance upon any property, right or asset of the Investor pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Investor is a party or by which the Investor is bound or to which any property, right or asset of the Investor is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Investor or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory

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authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Investor to consummate the transactions contemplated by, and perform its obligations under, the Transaction Documents.

(d) **No Consents Required.** No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required by the Investor for the execution, delivery and performance by the Investor of this Agreement, the purchase of the Purchased Shares and the consummation of the transactions contemplated by the Transaction Documents, except for the registration of the Purchased Shares under the Securities Act as and when required under the Registration Rights Agreement.

(e) **Purchase for Investment.** The Investor acknowledges that the Purchased Shares are “restricted securities” and have not been registered under the Securities Act or under any state securities laws. The Investor (1) is acquiring the Purchased Shares pursuant to an exemption from registration under the Securities Act for its own account solely for investment with no present intention or plan to distribute any of the Purchased Shares to any person nor with a view to or for sale in connection with any distribution thereof, in each case in violation of the Securities Act, (2) will not sell or otherwise dispose of any of the Purchased Shares, except in compliance with the registration requirements or exemption provisions of the Securities Act and any other applicable securities laws, (3) is an “accredited investor” (as that term is defined by Rule 501 of the Securities Act) and (4) is not registered broker-dealer registered under Section 15(a) of the Exchange Act, or a member of FINRA or an entity engaged in the business of being a broker-dealer. Such Investor is not affiliated with any broker-dealer registered under Section 15(a) of the Exchange Act, or a member of FINRA or an entity engaged in the business of being a broker-dealer. Without limiting any of the foregoing, neither the Investor nor any of its Affiliates has taken, and the Investor will not, and will cause its Affiliates not to, take any action that would otherwise cause the securities to be purchased hereunder to be subject to the registration requirements of the Securities Act.

(f) **Financial Capability.** The Investor has and will have at Closing immediately available funds necessary to consummate the Closing on the terms and conditions contemplated by this Agreement.

(g) **Sophisticated Investor.** The Investor is knowledgeable, sophisticated and experienced in making, and is qualified to make, decisions with respect to investments in shares representing an investment decision like that involved in the purchase of the Purchased Shares, including investments in securities issued by the Company, and has requested, received, reviewed and considered all information it deems relevant in making an informed decision to evaluate the merits and risks of a purchase of the Purchased Shares, and can bear the economic risk and complete loss of its investment in the Purchased Shares.

(h) **Existing Ownership.** The Investor does not legally or Beneficially Own or control, directly or indirectly, any shares, convertible debt or any securities convertible into or exercisable or exchangeable for, or any rights, warrants or options to acquire, any shares or convertible debt in the Company, or have any agreement, understanding or arrangement to acquire any of the foregoing, except with respect to such Purchased Shares as to be purchased by the Investor pursuant to the transactions contemplated herein.

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(i) **No General Solicitation.** The Investor did not learn of the investment in the Purchased Shares as a result of any general solicitation or general advertising.

(j) **Reliance on Exemptions.** The Investor understands that the Purchased Shares offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgements and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Purchased Shares.

(k) **No Broker's Fees.** The Investor is not a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them for a brokerage commission, finder's fee or like payment in connection with the purchase of the Purchased Shares.

## ARTICLE III

### COVENANTS

#### SECTION 3.1. Filings; Other Actions.

(a) Each of the Investor and the Company will use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including using commercially reasonable efforts to accomplish the following: (a) all acts reasonably necessary to cause the conditions to Closing to be satisfied; (b) the obtaining of all necessary actions or no actions, waivers, consents and approvals from Governmental Entities and the making of all necessary registrations and filings and the taking of all reasonable steps necessary to obtain an approval or waiver from, or to avoid an action or proceeding by any Governmental Entity; (c) the obtaining of all necessary consents, approvals or waivers from third parties; and (d) executing and delivering any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement. In furtherance of the foregoing, the Investor and the Company will cooperate and consult with each other and use commercially reasonable efforts to prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings, and other documents, and to obtain all necessary permits, consents, orders, approvals, and authorizations of, or any exemption by, all third parties and Governmental Entities, and expiration or termination of any applicable waiting periods, necessary or advisable to consummate the transactions contemplated by this Agreement and to perform covenants contemplated by this Agreement. Each party shall execute and deliver both before and after the Closing such further certificates, agreements, and other documents and take such other actions as the other party may reasonably request to consummate or implement such transactions or to evidence such events or matters.

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(b) Each party agrees, upon reasonable request, to furnish the other party with all information concerning itself, its subsidiaries, Affiliates, directors, officers, partners, and shareholders and such other matters as may be reasonably necessary or advisable in connection with any statement, filing, notice, or application made by or on behalf of such other party or any of its subsidiaries to any Governmental Entity in connection with this Agreement. Notwithstanding anything herein to the contrary, neither the Investor nor the Company shall be required to furnish the other party with any (1) sensitive personal biographical or personal financial information of any of the directors, officers, employees, managers or partners of the Investor or any of its Affiliates, (2) proprietary and non-public information related to the organizational terms of, or investors in, the it or its Affiliates, or (3) any information that it deems private or confidential.

SECTION 3.2. Expenses. Each of the parties will bear and pay all costs and expenses incurred by it or on its behalf in connection with this Agreement and the transactions contemplated under this Agreement; provided that the Company shall reimburse Investor for the reasonable and documented fees of its counsel, up to a maximum of \$15,000.

SECTION 3.3. Confidentiality. Each party to this Agreement will hold, and will cause its respective subsidiaries and their directors, officers, employees, agents, consultants, and advisors to hold, in strict confidence, unless disclosure to a Governmental Entity is necessary in connection with any necessary regulatory approval or unless compelled to disclose by judicial or administrative process or, in the written opinion of its counsel, by other requirement of law or the applicable requirements of any Governmental Entity, all nonpublic records, books, contracts, instruments, computer data and other data and information (collectively, "*Information*") concerning the other party hereto furnished to it by such other party or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (1) previously known by such party on a nonconfidential basis, (2) in the public domain through no fault of such party, or (3) later lawfully acquired from other sources by the party to which it was furnished), and neither party hereto shall release or disclose such Information to any other person, except its auditors, attorneys, financial advisors, other consultants, and advisors. If a party is required to disclose any Information to a Governmental Entity in accordance with this SECTION 3.3, the disclosing party shall notify the other party prior to making any such disclosure by providing the other party with the text of the disclosure requirement and draft disclosure at least 24 hours prior to making any such disclosure, and will narrow the draft disclosure to the extent the other party reasonably requests.

SECTION 3.4. Representations and Warranties.

(a) Prior to the Closing, the Company shall promptly provide the Investor with written notice of the occurrence of any circumstance, event, change, development or effect occurring after the date hereof and relating to the Company or any Group Company of which the Company has knowledge or, in the reasonable judgment of the Company, may otherwise cause or render any of the representations and warranties of the Company set forth in SECTION 2.1 of this Agreement to be inaccurate in any material respect.

(b) Prior to the Closing, the Investor shall promptly provide the Company with written notice of the occurrence of any circumstance, event, change, development or effect occurring after the date hereof and relating to the Investor of which the Investor has knowledge or, in the reasonable judgment of the Investor, may otherwise cause or render any of the representations and warranties of the Investor set forth in SECTION 2.2 of this Agreement to be inaccurate in any material respect.

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**SECTION 3.5. Registration Statements.** The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that will be integrated with the offer or sale of the Purchased Shares in a manner that would require the registration under the 1933 Act of the sale of the Purchased Shares to the Investor, or that will be integrated with the offer or sale of the Purchased Shares for purposes of the rules and regulations of any trading market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

## **ARTICLE IV**

### **ADDITIONAL AGREEMENTS**

#### **SECTION 4.1. Compliance with Laws.**

(a) The Investor acknowledges that it is aware of, and that will advise its representatives of, the restrictions imposed by applicable United States and other applicable jurisdictions' securities laws with respect to trading in securities while in possession of material non-public information relating to the issuer of such securities and on communication of such information when it is reasonably foreseeable that the recipient of such information is likely to trade such securities in reliance on such information.

#### **SECTION 4.2. Legend.**

(a) The Investor agrees that all certificates or other instruments representing the securities subject to this Agreement will bear a legend substantially to the following effect:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT AND SUCH LAWS. ANY ATTEMPT TO TRANSFER, SELL, OFFER TO SELL, PLEDGE, HYPOTHECATE OR OTHERWISE DISPOSE OF THIS INSTRUMENT IN VIOLATION OF THESE RESTRICTIONS SHALL BE VOID."

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(b) Upon request of the Investor, upon receipt by the Company of an opinion of counsel and other customary representations and other documentation from the Investor, in each case, reasonably satisfactory to the Company, to the effect that such legend is no longer required under the Securities Act or applicable state laws, as the case may be, the Company shall promptly cause the legend to be removed from any certificate for any securities. The Investor acknowledges that the Purchased Shares have not been registered under the Securities Act or under any state securities laws and agrees that it will not sell or otherwise dispose of any of the Purchased Shares except in compliance with the registration requirements or exemption provisions of the Securities Act and any other applicable securities laws.

**SECTION 4.3. Indemnity.**

(a) The Company shall indemnify Investor and its Affiliates (collectively, the “*Investor Indemnified Parties*”) and hold each of them harmless against any actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith, and including reasonable attorneys’ fees and disbursements (the “*Losses*”) suffered, incurred or paid by the Investor Indemnified Parties arising from: (i) any breach of any representation or warranty made by the Company in SECTION 2.1 to be true and correct as of the date hereof and as of the Closing Date; or (ii) any breach of any covenant or agreement by the Company contained in this Agreement. Other than with respect to fraud, in no event shall the Company be liable for or have an obligation to indemnify or hold harmless the Investor Indemnified Parties for Losses (i) in connection with the representations and warranties in SECTION 2.1(a), SECTION 2.1(b) and SECTION 2.1(d) (collectively, the “*Fundamental Representations*”) in excess of the Aggregate Purchase Price paid to the Company pursuant to this Agreement and (ii) in connection with the representations and warranties other than the Fundamental Reps in excess of US\$15,000,000, and the Company shall not be liable to the Investor Indemnified Parties for any Losses unless the aggregate amount of all Losses incurred by the Investor Indemnified Parties exceeds US\$750,000 in the aggregate (the “*Basket*”), in which case the Company shall be liable for all such Losses in excess of the Basket. The Company shall not be liable to the Investor Indemnified Parties for any Losses arising under this SECTION 4.3 relating to an individual claim resulting in Losses in the amount of US\$100,000 or less (a “*De Minimis Claim*”), regardless of whether or not aggregate Losses have exceeded the Basket; nor shall the amount of any such De Minimis Claims be taken into account in determining whether the Basket has been reached. Notwithstanding anything to the contrary, in no event shall the aggregate liability of the Company to the Investor Indemnified Parties for any Losses in connection with the Transaction Documents and the transactions contemplated thereby exceed the Aggregate Purchase Price.

(b) The Investor shall indemnify each of the Company and its Affiliates and each of their respective directors, officers, employees and shareholders, owners (collectively, the “*Company Indemnified Parties*”) and hold each of them harmless against any and all Losses suffered, incurred or paid by the Company Indemnified Parties, arising from, as a result of or in connection with any failure of any representation or warranty made by the Investor in SECTION 2.2(e) and/or SECTION 2.2(j) to be true and correct as of the date hereof and as of the Closing Date.

(c) A party entitled to indemnification hereunder (an “*Indemnified Party*”) shall give written notice to the indemnifying party (the “*Indemnifying Party*”) of any claim with respect to which it seeks indemnification promptly after the discovery by such Indemnified Party of any matters giving rise to a claim for indemnification; *provided* that the failure of any

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Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this SECTION 4.3 unless and to the extent that the Indemnifying Party shall have been actually materially prejudiced by the failure of such Indemnified Party to so notify such party. No claim for indemnification may be asserted against any Indemnifying Party for breach of any representation, warranty, covenant or agreement contained herein unless written notice of such claim is received by such Indemnifying Party on or prior to the date on which the representation, warranty, covenant or agreement on which such claim or proceeding is based ceases to survive as set forth in SECTION 6.1. Such notice shall describe in reasonable detail such claim. In case any such action, suit, claim or proceeding is brought against an Indemnified Party, the Indemnified Party shall be entitled to hire, at the cost and expense of the Indemnifying Party, counsel and conduct the defense thereof; *provided, however,* that the Indemnifying Party shall only be liable for the legal fees and expenses of one law firm for the Indemnified Parties, taken together with regard to any single action or group of related actions, upon agreement by the Indemnified Parties and the Indemnifying Party. If the Indemnifying Party assumes the defense of any claim, the Indemnified Parties shall thereafter deliver to the Indemnifying Party copies of all notices and documents (including court papers) received by the Indemnified Parties relating to the claim, and the Indemnified Parties shall cooperate in the defense or prosecution of such claim. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information that are reasonably relevant to such claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Indemnifying Party shall not be liable for any settlement of any action, suit, claim or proceeding effected without its written consent; *provided, however,* that the Indemnifying Party shall not unreasonably withhold, delay or condition its consent. The Indemnifying Party further agrees that it will not, without any Indemnified Party's prior written consent (which shall not be unreasonably withheld or delayed), settle or compromise any claim or consent to entry of any judgment in respect thereof in any pending or threatened action, suit, claim or proceeding in respect of which indemnification has been sought hereunder unless such settlement or compromise includes an unconditional release of such Indemnified Party from all liability arising out of such action, suit, claim or proceeding.

(d) In calculating the amount of any Losses hereunder, there shall be subtracted the amount of any insurance proceeds and third-party payments received by the Indemnified Parties with respect to such Losses, if any, net of any actual costs or expenses incurred in connection with securing or obtaining such proceeds or payments. In no event shall any Indemnified Party be entitled to recover or make a claim for any amounts in respect of, and in no event shall "Losses" be deemed to include, consequential or indirect damages, lost profits or punitive damages and, in particular, no "diminution of value", "multiple of profits" or "multiple of cash flow" or similar valuation methodology shall be used in calculating the amount of any Losses, unless in any such case, such Losses are awarded to a third party.

(e) Absent a showing of fraud by a party, and assuming the Closing has occurred, the indemnification obligation of a party under this SECTION 4.3 shall be the sole and exclusive remedy of any other party against such party for monetary damages for breach of any representation, warranty, covenant or agreement contained in this Agreement or any of the transactions contemplated hereby. Nothing herein shall limit a party's right to seek injunctive or other equitable relief in connection with the enforcement of this Agreement.

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(f) Any indemnification payments pursuant to this SECTION 4.3 shall be treated as an adjustment to the investment amount for the Purchased Shares for U.S. federal income and applicable state and local tax purposes, unless a different treatment is required by applicable law.

SECTION 4.4. **Registration Rights.** At the Closing, the Company, the Investor and the other parties thereto will each enter into the Registration Rights Agreement, substantially in the form attached as Exhibit C hereto.

## ARTICLE V

### TERMINATION

SECTION 5.1. **Termination.** This Agreement may be terminated prior to the Closing:

(a) by mutual written consent of the Investor and the Company;

(b) by the Company, upon written notice to the Investor, in the event that any of the conditions of Closing set forth in SECTION 1.4(b) are not satisfied, or waived by the Company, on or before the 30<sup>th</sup> day after the date hereof; *provided, however,* that the right to terminate this Agreement pursuant to this SECTION 5.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(c) by the Investor, upon written notice to the Company, in the event that the conditions of Closing set forth in SECTION 1.4(a) are not satisfied, or waived by the Investor, on or before the 30<sup>th</sup> day after the date hereof; provided, however, that the right to terminate this Agreement pursuant to this SECTION 5.1(c) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date; or

(d) by the Company, upon written notice to the Investor, in the event that any Governmental Entity shall have issued any order, decree or injunction or taken any other action restraining, enjoining or prohibiting any of the transactions contemplated by this Agreement, and such order, decree, injunction or other action shall have become final and nonappealable.

SECTION 5.2. **Effects of Termination.** In the event of any termination of this Agreement as provided in SECTION 5.1, this Agreement (other than SECTION 3.2, SECTION 3.3, SECTION 4.3, this SECTION 5.2, ARTICLE VI (other than SECTION 6.1) and all applicable defined terms, which shall remain in full force and effect) shall forthwith become wholly void and of no further force and effect; *provided* that nothing herein shall relieve any party from liability for willful breach of this Agreement.

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## ARTICLE VI

### MISCELLANEOUS

SECTION 6.1. Survival. Each of the representations and warranties set forth in this Agreement shall survive the Closing under this Agreement but only for a period of twenty-four (24) months following the Closing Date, except for Fundamental Representations which shall survive for the duration of any statutes of limitations applicable thereto, in each case or until final resolution of any claim or action arising from the breach of any such representation and warranty (including any Fundamental Representations), if notice of such breach was provided prior to the end of such period, and thereafter shall expire and have no further force and effect. Except as otherwise provided herein, all covenants and agreements contained herein shall survive for the duration of any statutes of limitations applicable thereto or until, by their respective terms, they are no longer operative.

SECTION 6.2. Amendment. No amendment or waiver of this Agreement will be effective with respect to any party unless made in writing and signed by an officer of a duly authorized representative of such party.

SECTION 6.3. Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The conditions to each party's obligation to consummate the Closing are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver of any party to this Agreement will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver.

SECTION 6.4. Counterparts. For the convenience of the parties hereto, this Agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Copies of executed signature pages to this Agreement may be delivered by facsimile or electronic mail ("e-mail") and such copies will be deemed as sufficient as if actual signature pages had been delivered.

SECTION 6.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York, without regard to conflict of law principles.

SECTION 6.6. Dispute Resolution. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the

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laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. To the extent that the Company has or hereafter may acquire any immunity (on the grounds of sovereignty or otherwise) from the jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives, to the fullest extent permitted by law, such immunity in respect of any such suit, action or proceeding. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**SECTION 6.7. Notices.** Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or upon confirmation of receipt if delivered by facsimile or e-mail, (b) on the first business day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as follows:

(a) If to the Investor:

Perceptive Life Sciences Master Funds, Ltd.  
51 Astor Place, 10th Floor  
New York, NY 100

Attn: Adam Stone  
E-mail: Adam@perspectivelife.com

with a copy (which shall not constitute notice) to:

Tannenbaum Helpern Syracuse Hirschtritt LLP  
900 Third Avenue  
New York, NY 10022

Attn: David R. Lallouz  
Tel: (212)702-3142  
Facsimile: (646)390-7005  
Email: lallouz@thsh.com

(b) If to the Company:

Athenex, Inc.  
Conventus Building, 1001 Main Street, Suite 600, Buffalo, NY 14203,  
United States of America

Attn: Teresa Bair, Vice President, Legal Affairs & Corporate Development  
Email: tbair@athenex.com  
Facsimile: +1 716 800 6818

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with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP

ICBC Tower, 35/F

3 Garden Road, Central

Hong Kong SAR

Attn: Daniel Fertig / Ian C. Ho

Faxsimile: +852 2689-7694 / +852 2514-7685

E-mail: dfertig@stblaw.com / iho@stblaw.com

SECTION 6.8. Entire Agreement, Etc. This Agreement (together with all the Exhibits and Schedules hereto and certificates and other written instruments delivered in connection from time to time on and following the date hereof) constitute and contain the entire agreement and understanding of the parties with respect to the subject matter hereof and thereof, and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties and obligations between the parties with respect to the subject matter hereof and thereof. Except as expressly set forth in this Agreement, neither Party makes any representation, warranty, covenant or agreement to the other Party of any nature, express or implied. Each party expressly represents that it is not relying on any oral or written representation, warranties, covenants or agreements other than those expressly contained in this Agreement (which includes all Exhibits and Schedules hereto). The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and their permitted assigns. Neither this Agreement nor any of the rights, duties or obligations hereunder may be assigned by any party hereto without the prior express written consent of the other party hereto. Any purported assignment in violation of this SECTION 6.8 shall be null and void.

SECTION 6.9. Definitions. For purposes hereof, terms, when used herein with initial capital letters, shall have the respective meanings given to them in the respective Sections set forth in the index of defined terms at the beginning of this Agreement. Wherever required by the context of this Agreement, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa, and references to any agreement, document or instrument shall be deemed to refer to such agreement, document or instrument as amended, supplemented or modified from time to time. All article, section, paragraph or clause references not attributed to a particular document shall be references to such parts of this Agreement, and all exhibit, annex and schedule references not attributed to a particular document shall be references to such exhibits, annexes and schedules to this Agreement.

(a) When used herein:

(i) the term "*Affiliate*" means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlled by*" and "*under common control with*") when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such person, whether through the ownership of voting securities by contract or otherwise;

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- (ii) the words “*including*,” “*includes*,” “*included*” and “*include*” are deemed to be followed by the words “*without limitation*”;
  - (iii) the terms “*herein*,” “*hereof*” and “*hereunder*” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision; and
  - (iv) the words “*it*” or “*its*” are deemed to mean “*him*” or “*her*” and “*his*” or “*her*;” as applicable, when referring to an individual.
- (b) The following terms shall have the following meanings:
- (i) “business day” means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close;
  - (ii) “person” has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act;
  - (iii) “*Beneficially Own*” and “*Beneficial Ownership*” are defined in Rules 13d-3 and 13d-5 of the Exchange Act;
  - (iv) “*Group Companies*” means the Company and all of its material subsidiaries, material consolidated affiliated entities and their material subsidiaries (individually, a “*Group Company*” collectively, the “*Group Companies*”);
  - (v) “*knowledge of the Company*” or “*Company’s knowledge*” means the actual knowledge, after due inquiry, of the executive officers of the Company; and
  - (vi) “*Material Adverse Effect*” means any development, fact, circumstance, condition, event change, occurrence or effect that would have or would reasonably be expected to have a material adverse effect on the assets, business, financial condition or results of operations of the Group Companies, taken as a whole, other than any development, fact, circumstance, condition, event, change, occurrence or effect resulting from (A) changes in general economic, financial market, business or geopolitical conditions; (B) changes or developments in any of the industries in which the Company or any other Group Company operates; (C) changes in any applicable laws or applicable accounting regulations or principles, or the interpretation or enforcement thereof; (D) any change in the price or trading volume of the Common Stock or any failure to meet any financial projections, forecasts or forward looking statements; (E) natural disaster or any outbreak or escalation of hostilities or war or any act of terrorism; (F) the announcement of and performance of this Agreement by the Company, the

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pendency or consummation of the transactions contemplated hereunder, or the identity of the Investor or any of its affiliates; or (G) any action taken, or omission to take action, by the Company or another Group Company that taking or omitting of which, as applicable, the Investor has consented to or requested in writing, provided, however, that any event, occurrence, fact, condition or change referred to in clauses (A) through (C) and (E) above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Group Companies (taken as a whole) compared to other participants in the industries in which the Group Companies operate.

SECTION 6.10. Captions. The article, section, paragraph and clause captions herein are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof.

SECTION 6.11. Severability. If any provision of this Agreement is found to be invalid or unenforceable, then such provision shall be construed, to the extent feasible, so as to render the provision enforceable and to provide for the consummation of the transactions contemplated hereby on substantially the same terms as originally set forth herein, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect unless the severed provision is essential to the rights or benefits intended by the parties. In such event, the parties shall use commercially reasonable efforts to negotiate, in good faith, a substitute, valid and enforceable provision.

SECTION 6.12. No Third-Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer or shall confer upon any person other than the express parties hereto, any benefit, right or remedies. The representations and warranties set forth in Article II and the covenants set forth in Articles III and IV have been made solely for the benefit of the parties to this Agreement and (a) may be intended not as statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate; and (b) may apply standards of materiality in a way that is different from what may be viewed as material by shareholders of, or other investors in, the Company.

SECTION 6.13. Public Announcements. Without limiting any other provision of this Agreement, the parties hereto, to the extent permitted by applicable law, will consult with each other before issuance, and provide each other the opportunity to review, comment upon and agree on any press release or public statement with respect to this Agreement (which includes the Exhibits hereto) and the transactions contemplated hereby and the ongoing business relationship among the parties hereto and thereto. The parties hereto will not issue any such press release or make any such public statement without the prior written consent of the other party, except as may be required by law or any listing agreement with or requirement of the NASDAQ or any other applicable securities exchange, provided that the disclosing party shall, to the extent permitted by applicable law or any listing agreement with or requirement of the NASDAQ or any other applicable securities exchange, inform the other party about the disclosure to be made pursuant to such requirements prior to the disclosure.

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SECTION 6.14. Specific Performance. The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to seek specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or equity.

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**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first herein above written.

**ATHENEX, INC.**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Share Purchase Agreement]*

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**PERCEPTIVE LIFE SCIENCES MASTER FUND, LTD.**

By: \_\_\_\_\_

Name:

Title:

*[Signature Page to Share Purchase Agreement]*

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**EXHIBIT A: Form of Officer's Certificate from the Company**

**OFFICER'S CERTIFICATE**

[•], 2018

The undersigned, the [•] of Athenex Inc., a company organized under the State of Delaware (the “*Company*”), pursuant to SECTION 1.4(a)(v) of the Share Purchase Agreement, dated as of [•], 2018 (the “*Agreement*”) by and between Perceptive Life Sciences Master Fund, Ltd. (the “*Investor*”) and the Company, hereby certifies to the Investor that:

1. The Company has performed in all material respects all obligations required to be performed by it at or prior to or contemporaneously with the Closing under the Agreement.
2. The representations and warranties of the Company set forth in SECTION 2.1 of the Agreement were true and correct in all material respects as of the date of the Agreement and are true and correct in all material respects as of the Closing (except (i) to the extent such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such date and (ii) any representations and warranties that have “material” or “Material Adverse Effect” qualifications, in which case such representations and warranties shall be true in all respects).

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Agreement.

[Signature Page Follows]

*Exhibit A – I*

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IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate solely in such respective capacity and not in an individual capacity as of this      day of           , 2018.

By: \_\_\_\_\_

Name:

Title:

*Exhibit A – 2*

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**Exhibit B: Form of Legal Opinion**

*Exhibit B*

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**Exhibit C: Form of Registration Rights Agreement**

*Exhibit C*

**CREDIT AGREEMENT AND GUARANTY**

**dated as of**

**June 30, 2018**

**by and among**

**ATHENEX, INC.,  
as the Borrower,**

**THE SUBSIDIARY GUARANTORS FROM TIME TO TIME PARTY HERETO,  
as the Guarantors,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO  
as the Lenders,**

**and**

**PERCEPTIVE CREDIT HOLDINGS II, LP,  
as the Administrative Agent**

**U.S. \$50,000,000**

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## CREDIT AGREEMENT AND GUARANTY

CREDIT AGREEMENT AND GUARANTY, dated as of June 30, 2018 (this “*Agreement*”), among **ATHENEX, INC.**, a Delaware corporation (the “**Borrower**”), certain Subsidiaries of the Borrower that may be required to provide Guarantees from time to time hereunder (each a “*Guarantor*” and collectively, the “*Guarantors*”), the lenders from time to time party hereto (each a “*Lender*” and collectively, the “*Lenders*”), and **PERCEPTIVE CREDIT HOLDINGS II, LP**, as administrative agent for the Lenders (in such capacity, the “*Administrative Agent*”).

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a senior secured term loan facility to the Borrower in an aggregate principal amount of \$50,000,000; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions set forth herein, to provide such senior secured term loan facility.

NOW, THEREFORE, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS

**1.01 Certain Defined Terms.** As used herein, the following terms have the following respective meanings:

“*Account Control Agreement Completion Date*” has the meaning set forth in **Section 8.19(a)**.

“*Acquisition*” means any transaction, or any series of related transactions, by which any Person (for purposes of this definition, an “*acquirer*”) directly or indirectly, by means of amalgamation, merger, purchase of assets, purchase of Equity Interests, or otherwise, (i) acquires all or substantially all of the assets of any other Person, (ii) acquires an entire business line or unit or division of any other Person, (iii) with respect to any other Person that is managed or governed by a Board, acquires control of Equity Interests of such other Person representing more than fifty percent (50%) of the ordinary voting power (determined on a fully-diluted basis) for the election of directors of such Person’s Board, or (iv) acquires control of more than fifty percent (50%) of the Equity Interests in any other Person (determined on a fully-diluted basis) that is not managed by a Board.

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

“*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.

“*Agreement*” has the meaning set forth in the preamble hereto.

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**“ANDA”** means (i) (x) an abbreviated new drug application (as defined in the FD&C Act) and (y) any similar application or functional equivalent relating to any new drug application applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to any of the foregoing.

**“Applicable Margin”** means nine percent (9%), as may be increased pursuant to **Section 3.02(b)**.

**“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 substantially in the form of **Exhibit F**.

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

**“Bail-In Legislation”** means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

**“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.”

**“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.

**“BLA”** means (i) (x) a biologics license application (as defined in the FD&C Act) to introduce, or deliver for introduction, a biologic product, including vaccines into commerce in the U.S., or any successor application or procedure and (y) any similar application or functional equivalent relating to biologics licensing applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to the foregoing.

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

**“Borrower”** has the meaning set forth in the preamble hereto.

**“Borrower Party”** has the meaning set forth in **Section 14.03(b)**.

**“Borrowing”** means the borrowing of the Loans on the Closing Date.

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

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***“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 City and, when determined in connection with notices and determinations in respect of LIBOR or any Loan or any funding, Interest Period or any payment in respect of Loans, that is also a day on which dealings in dollar deposits are carried on in the London interbank market.

***“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.

***“Casualty Event”*** means the damage, destruction or condemnation, as the case may be, of property of the Borrower or any of its Subsidiaries in excess of \$2,000,000 (or the Equivalent Amount in other currencies).

***“CFC”*** means a Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code.

***“CFC Holding Company”*** means any Domestic Subsidiary that owns no material assets (directly or indirectly) other than Equity Interests and debt of one or more CFCs or Domestic Subsidiaries that are themselves CFC Holding Companies.

***“Change of Control”*** means an event or series of events (i) as a result of which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Act, but excluding any of such person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such Plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an ***“option right”***)), directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or (ii) as a result of which, during any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (x) who were members of such Board on the first day of such period, (y) whose election or nomination to such Board was approved by individuals referred to in ***clause (x)*** above constituting at the time of such election or nomination at least a majority of such Board or equivalent governing body or (z) whose election or nomination to such Board was approved by individuals referred to in ***clauses (x)*** and ***(y)*** above constituting at the time of such election or nomination at least a majority of such Board; or (iii) that results in the sale of all or substantially all of the assets or businesses of the Borrower and its Subsidiaries, taken as a whole, or (iv) that results in the Borrower’s failure to own, directly or indirectly, beneficially and of record, one-hundred percent (100%) of all issued and outstanding Equity Interests of each Subsidiary Guarantor.

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***“Claims”*** means (and includes) any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgement or other similar process, whether in respect of assessments or reassessments, 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, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

***“Closing Date”*** means the date on which the conditions precedent specified in **Section 6.01** are satisfied (or waived in accordance with **Section 14.04**) and on which the Loans are to be made to the Borrower.

***“Closing Date Certificate”*** has the meaning set forth in **Section 6.01(c)**.

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

***“Collateral”*** means any asset or property in which a Lien is purported to be granted under any Loan Document, including future acquired or created assets or property (or all such assets or property, as the context may require).

***“Commitment”*** means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on the Closing Date in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender’s name on **Schedule 1** under the caption “Commitment”, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise. The aggregate Commitments on the date of this Agreement equal \$50,000,000.

***“Company Competitor”*** means (i) any competitor of the Borrower or any of its Subsidiaries primarily operating in the same line of business as the Borrower or any of its Subsidiaries and (ii) any of its Affiliates (other than any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the ordinary course of its business,) that are either (x) identified by name in writing by the Borrower to the Administrative Agent from time to time or (y) clearly identifiable on the basis of such Affiliate’s name.

***“Compliance Certificate”*** has the meaning set forth in **Section 8.01(c)**.

***“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.

***“Contracts”*** means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement 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).

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**“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” have meanings correlative thereto.

**“Controlled Account”** has the meaning set forth in **Section 8.18(a)**.

**“Copyright”** means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof and all other rights whatsoever accruing thereunder or pertaining thereto throughout the world.

**“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)**.

**“Designated Jurisdiction”** means any country or territory to the extent that such country or territory is the subject of country- or territory-wide Sanctions.

**“Disqualified Equity Interests”** means, with respect to any Person, 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), 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 ninety-one (91) days after the Maturity Date.

**“Dollars”** and “\$” means lawful money of the United States of America.

**“Domestic Subsidiary”** means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any state of the United States or the District of Columbia.

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

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

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

**"Eligible Transferee"** means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the ordinary course of its business, (vi) with respect to any Lender, any of its Affiliates, and (vii) any other "accredited investor" (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; provided that, an Eligible Transferee shall not include (x) any Company Competitor, or (y) any Person that primarily invests in distressed debt or other distressed financial assets; provided further that (A) neither **clause (x)** or (y) above shall apply retroactively to any Person that previously acquired an assignment or participation interest hereunder to the extent such Person was not a Company Competitor or a Person of the type described in **clause (y)** above at the time of the applicable assignment or participation, as the case may be, and (B) with respect to both **clauses (x)** and (y) above, the Administrative Agent shall not have any duty or obligation to carry out due diligence in order to identify or determine whether a Person would be excluded as an Eligible Transferee as a result of the application of either such clause.

**"Environmental Law"** means any federal, state, provincial or local governmental law, rule, regulation, order, writ, judgment, injunction or decree, whether U.S. or non-U.S., relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and any specific agreements entered into with any competent Governmental Authority that 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 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 designated and whether voting or non-voting.

**"Equity Transaction"** means the transactions contemplated by the Share Purchase Agreement, dated as of June 29, 2018, by and between the Borrower and Perceptive Life Sciences Master Fund, Ltd.

**"Equivalent Amount"** means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first 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.

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**"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) from any Multiemployer Plan if there is any potential liability therefore, 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 might 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 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 (l) 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

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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; (xvi) 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 IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; or (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.

“**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, and the rules and regulations promulgated thereunder.

“**Exchange Rate**” means, as of any date, 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. (Eastern 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 designated by the Administrative Agent.

“**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(i)**) 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.

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**"FATCA"** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not more onerous to comply with), any current or future regulations or official interpretations thereof, any 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, 21 U.S.C. §§ 301 et seq. (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines 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 rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**"Fee Letter"** means the Fee Letter, dated as of the date of this Agreement, among the Borrower, the Lenders and the Administrative Agent.

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

**"Foreign Subsidiary"** means any Subsidiary that is not a Domestic Subsidiary.

**"GAAP"** means generally accepted accounting principles in the United States of America, 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. All references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(e)(i)**.

**"Governmental Approval"** means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance or exemption that is issued or granted by or from (or pursuant to any act of) any Governmental Authority, including any application or submission related to any of the foregoing.

**"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.

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**“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 (x) endorsements for collection or deposit and (y) guarantees of operating leases, in each case, in the ordinary course of business.

**“Guarantee Assumption Agreement”** means a Guarantee Assumption Agreement substantially in the form of **Exhibit C** by an entity that, pursuant to **Section 8.12(a)**, is required to become a “Subsidiary Guarantor.”

**“Guaranteed Obligations”** has the meaning set forth in **Section 13.01**.

**“Hazardous Material”** means any hazardous or toxic substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material, 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, collectively, all Laws and Product Authorizations applicable to the business, any Product or the Product Commercialization and Development Activities of any Obligor, whether U.S. or non-U.S., regulating the distribution, dispensing, importation, exportation, quality, manufacturing, labeling, promotion and provision of and payment for drugs, medical or healthcare products, items and services, including, without limitation, 45 C.F.R. et seq. (“HIPAA”); Section 1128B(b) of the Social Security Act, as amended; 42 U.S.C. § 1320a-7b (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute”; § 1877 of the Social Security Act, as amended; 42 U.S.C. § 1395nn (Limitation on Certain Physician Referrals), commonly referred to as “Stark Statute”; the FD&C Act; all applicable Good Manufacturing Practice requirements addressed in the FDA’s Quality System Regulation (21 C.F.R. Part 820); all rules, regulations and guidance with respect to the provision of Medicare and Medicaid programs or services (42 C.F.R. Chapter IV et seq.); 10 U.S.C. §§1071 – 1110(b) (the “TRICARE Program”); 5 U.S.C. §§ 8901 – 8914 (“FEHB Plans”); the PDMA; and all rules, regulations and guidance promulgated under or pursuant to any of the foregoing, including any non-U.S. equivalents.

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***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.

***Immateriel Subsidiary*** means any Subsidiary of the Borrower that (i) individually constitutes or holds less than five percent (5%) of the Borrower's consolidated total assets or generates less than five percent (5%) of the Borrower's consolidated total revenue, and (ii) when taken together with all then existing Immateriel Subsidiaries, such Subsidiary and such Immateriel Subsidiaries, in the aggregate, would constitute or hold less than fifteen percent (15%) of the Borrower's consolidated total assets or generate less than fifteen percent (15%) of the Borrower's consolidated total revenue, in each case as pursuant to the most recent fiscal period for which financial statements were required to have been delivered pursuant to **Sections 8.01(a) or (b)**.

***IND*** means (i) (x) an investigational new drug application (as defined in the FD&C Act) that is required to be filed with the FDA before beginning clinical testing in human subjects, or any successor application or procedure and (y) any similar application or functional equivalent relating to any investigational new drug application applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to the foregoing.

***Indebtedness*** of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (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, (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 (excluding accounts payable incurred in the ordinary course of business not overdue by more than ninety (90) days), (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 guaranteed minimum payments of such Person under any license or other agreements, (xiii) any Disqualified Equity Interests of such Person, and (xiv) all other obligations required to be classified as indebtedness of such Person under GAAP; provided that, notwithstanding the foregoing, Indebtedness shall not include (x) accrued expenses, deferred rent, deferred taxes, deferred compensation or customary obligations under employment agreements or (y) obligations with respect to operating leases which are subsequently reclassified as capital leases due to any changes in 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.

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**"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 the Information Certificate delivered pursuant to **Section 6.01(b)**.

**"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 U.S. or non-U.S.

**"Intercompany Subordination Agreement"** means a subordination agreement to be executed and delivered by each Obligor and each of its Subsidiaries, pursuant to which all obligations in respect of any Indebtedness owing to any such Person by an Obligor shall be subordinated to the prior payment in full in cash of all Obligations, such agreement to be in substantially the form attached hereto as **Exhibit I**.

**"Interest Period"** means, with respect to any Borrowing, (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 Loan was made, 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; provided that if such last day of a calendar month is not a Business Day, then the last day of the Interest Period applicable to such calendar month shall instead end on (and include) the next succeeding Business Day, and the immediately succeeding Interest Period shall instead begin on (and include) the calendar day immediately succeeding such Business Day.

**"Interest Rate"** means the sum of (i) the Applicable Margin plus (ii) the greater of (x) the Reference Rate and (y) two percent (2%).

**"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 any debt or 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

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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; or (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. 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**.

***“Law”*** means, collectively, all 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 each loan advanced by a Lender pursuant to **Section 2.01**.

***“Loan Documents”*** means, collectively, this Agreement, the Notes, the Security Documents, the Warrant, the Fee Letter, any Guarantee Assumption Agreement, the Intercompany Subordination Agreement and any subordination agreement, intercreditor agreement or other present or future document, instrument, agreement or certificate delivered to the Administrative Agent (for itself or for the benefit of any other Secured Party) in connection with this Agreement 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.

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**“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 Regulations U and X.

**“Material Adverse Change”** and **“Material Adverse Effect”** mean a material adverse change in or effect on (i) the business, financial performance, operations, condition of the assets or liabilities 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, remedies and benefits available to, or conferred upon, the Administrative Agent or the Secured Parties under any of the Loan Documents.

**“Material Agreement”** means (i) any Contract listed in **Schedule 7.14**, (ii) any other Contract to which any Obligor or any of its Subsidiaries is a party or a beneficiary from time to time, or to which any assets or properties of any Obligor or any of its Subsidiaries is bound the absence or termination of which could reasonably be expected to result in a Material Adverse Effect, and (iii) any other Contract to which any Obligor or any of its Subsidiaries is a party or a guarantor (or equivalent) that (x) relates to any Product or any Product Commercialization and Development Activity and (y) 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 any Obligor or any of its Subsidiaries in an aggregate amount in excess of \$5,000,000 (or the Equivalent Amount in other currencies), or (2) require payments or expenditures (including royalty, licensing or similar payments) made by any Obligor or any of its Subsidiaries in an aggregate amount in excess of \$5,000,000 (or the Equivalent Amount in other currencies).

**“Material Indebtedness”** means, at any time, any Indebtedness of any Obligor or Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds \$5,000,000 (or the Equivalent Amount in other currencies).

**“Material Intellectual Property”** means all Intellectual Property, whether currently owned or licensed, or acquired, developed or otherwise licensed or obtained after the date hereof by the Borrower or any of its Subsidiaries (i) the loss of which could reasonably be expected to result in a Material Adverse Effect, or (ii) that has a fair market value in excess of \$5,000,000 (or the Equivalent Amount in other currencies).

**“Material Subsidiary”** means any Subsidiary of the Borrower that is not an Immature Subsidiary.

**“Maturity Date”** means the earlier to occur of (x) fifth (5th) anniversary of the Closing Date and (y) the acceleration of the Obligations pursuant to **Section 11.02**.

**“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.

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**"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 4001(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

**"NDA"** means (i) (x) a new drug application (as defined in the FD&C Act) and (y) any similar application or functional equivalent relating to any new drug application applicable to or required by any non-U.S. country, jurisdiction or Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to any of the foregoing.

**"Net Cash Proceeds"** means, (i) with respect to any Casualty Event experienced or suffered by any Obligor 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 such Obligor 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 any Obligor 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 such Obligor 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 any Obligor or any of its Subsidiaries and (y) properly attributable to such Casualty Event or Asset Sale, as the case may be.

**"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 2.03**.

**"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 (including all Guaranteed Obligations and Warrant Obligations) any other 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.

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***“Obligors”*** means, collectively, the Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns.

***“One-Month LIBOR”*** means, with respect to any applicable Interest Period hereunder, the one-month London Interbank Offered Rate for deposits in Dollars at approximately 11:00 a.m. (London, England time), as determined by the Administrative Agent from the appropriate Bloomberg page (or any successor thereto or similar source reasonably determined by the Administrative Agent from time to time), which shall be that one-month London Interbank Offered Rate for deposits in Dollars in effect two (2) Business Days prior to the first day of such Interest Period rounded up to the nearest one-sixteenth (1/16) of one percent (1%). The Administrative Agent’s determination of interest rates shall be determinative on the Obligors and Lenders in the absence of manifest error.

***“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(g)**).

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

***“Participant Register”*** has the meaning set forth in **Section 14.05(e)**.

***“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 rights whatsoever accruing thereunder or pertaining thereto throughout the world.

***“Patriot Act”*** has the meaning set forth in **Section 14.19**.

***“Payment Date”*** means (i) the last day of each Interest Period and (ii) the Maturity Date.

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

**"PDMA"** means the Prescription Drug Marketing Act of 1987, 21 U.S.C. §§ 331 et seq. (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.

**"Permitted Acquisition"** means any Acquisition by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise; provided that:

- (a) immediately prior to, and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result therefrom;
- (b) such Acquisition shall comply in all material respects with all applicable Laws and all applicable Governmental Approvals;
- (c) in the case of any Acquisition of Equity Interests of another Person, after giving effect to such Acquisition, all Equity Interests of such other Person acquired by the Borrower or any of its Subsidiaries shall be owned, directly or indirectly, beneficially and of record, by the Borrower or any of its Subsidiaries, and, the Borrower shall cause such acquired Person to satisfy each of the actions set forth in **Section 8.12** as required by such Section;
- (d) on a *pro forma* basis after giving effect to such Acquisition, the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in **Section 10**;
- (e) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof does not exceed \$10,000,000 (or the Equivalent Amount in other currencies) in any fiscal year;
- (f) to the extent that the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests;
- (g) promptly upon request by the Administrative Agent in the case of any such Acquisition that has a purchase price in excess of \$35,000,000 (or the Equivalent Amount in other currencies), the Borrower shall provide to the Administrative Agent (i) at least ten (10) Business Day's prior written notice of any such Acquisition, together with summaries, prepared in reasonable detail, of all due diligence conducted by or on behalf of the Borrower or the applicable Subsidiary, as applicable, prior to such Acquisition, in each case subject to customary confidentiality restrictions, (ii) subject to customary confidentiality restrictions, a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents requested by the Administrative Agent), (iii) pro forma financial statements of the Borrower and its Subsidiaries (as of the last day of the most recently ended fiscal quarter prior to the date of consummation of such Acquisition for which financial statements are required to be delivered pursuant to **Sections 8.01(a) or (b)**) after giving effect to such Acquisition, and (iv) subject to customary confidentiality restrictions, any other information reasonably requested (to the extent available), by the Administrative Agent and available to the Obligors; and

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(h) no Obligor or any of its Subsidiaries (including any acquired Person) shall, in connection with any such Acquisition, assume or remain liable with respect to (x) any Indebtedness of the related seller or the business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.01(l)**, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02**, (z) any other liabilities (including Tax, ERISA and environmental liabilities), except to the extent the assumption of such liability could not reasonably be expected to result in a Material Adverse Effect. Any other such Indebtedness, liabilities or Liens not permitted to be assumed, continued or otherwise supported by any Obligor or Subsidiary thereof hereunder shall be paid in full or released within sixty (60) days of the acquisition date as to the business, Persons or properties being so acquired on or before the consummation of such Acquisition.

**“Permitted Cash Equivalent Investments”** means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any member states of the European Union or any agency or any state thereof having maturities of not more than one (1) year from the date of acquisition and (ii) commercial paper maturing no more than two hundred seventy (270) days after the date of acquisition thereof and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.

**“Permitted Indebtedness”** means any Indebtedness permitted under **Section 9.01**.

**“Permitted Liens”** means any Liens permitted under **Section 9.02**.

**“Permitted Refinancing”** means, with respect to any Indebtedness permitted to be refinanced, extended, renewed or replaced hereunder, any refinancings, extensions, renewals and replacements of such Indebtedness; provided that such refinancing, extension, renewal or replacement shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, except by an amount equal to accrued interest and a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred in connection therewith, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that, taken as a whole, are less favorable in any material respect to the Obligors and their respective Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness, (iii) have an applicable interest rate which does not exceed the greater of (A) the rate of interest of the Indebtedness being replaced and (B) the then applicable market interest rate, (iv) contain any new requirement to grant any Lien or to give any Guarantee that was not an existing requirement of such Indebtedness and (v) after giving effect to such refinancing, extension, renewal or replacement, no Default shall have occurred (or could reasonably be expected to occur) as a result thereof.

**“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.

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**“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.

**“Pledged Entity”** means (i) any Subsidiary of the Borrower, Equity Interests of which have been or, pursuant to **Section 8.19** are required to be, pledged to the Administrative Agent pursuant to the Security Documents and (ii) Axis Therapeutics Limited.

**“Prepayment Fee”** means with respect to any prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise, occurring (i) on or prior to the first anniversary of the Closing Date, an amount equal to three percent (3%) of the aggregate outstanding principal amount of the Loans being prepaid and (ii) at any time after the first anniversary of the Closing Date and on or prior to the third anniversary of the Closing Date, an amount equal to two percent (2%) of the aggregate outstanding principal amount of the Loans being prepaid.

**“Prepayment Price”** has the meaning set forth in **Section 3.03(a)(i)**.

**“Product”** means (i) those pharmaceutical or biological products (and described in reasonable detail) on **Schedule 2** attached hereto, and (ii) any current or future pharmaceutical or biological product developed, distributed, dispensed, imported, exported, labeled, promoted, manufactured, licensed, marketed, sold or otherwise commercialized by any Obligor or any of its Subsidiaries, including any such product in development or which may be developed.

**“Product Authorizations”** means any and all Governmental Approvals, whether U.S. or non-U.S. (including all applicable ANDAs, NDAs, BLAs, INDs, Product Standards, supplements, amendments, pre- and post- approvals, governmental price and reimbursement approvals and approvals of applications for regulatory exclusivity) of any Regulatory Authority, in each case, necessary to be held or maintained by, or for the benefit of, any Obligor or any of its Subsidiaries for the ownership, use or commercialization of any Product or for any Product Commercialization and Development Activities with respect thereto in any country or jurisdiction.

**“Product Commercialization and Development Activities”** means, with respect to any Product, any combination of research, development, manufacture, import, use, sale, licensing, importation, exportation, shipping, storage, handling, design, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or other commercialization activities, receipt of payment in respect of any of the foregoing (including, without limitation, in respect of licensing, royalty or similar payments), or any similar or other activities the purpose of which is to commercially exploit such Product.

**“Product Related Information”** means, with respect to any Product, all books, records, lists, ledgers, files, manuals, correspondence, reports, plans, drawings, data and other information of every kind (in any form or medium), and all techniques and other know-how, owned or possessed by the Obligors or any of their respective Subsidiaries that are necessary or

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useful for any Product Commercialization and Development Activities relating to such Product, including (i) brand materials and packaging, customer targeting and other marketing, promotion and sales materials and information, referral, customer, supplier and other contact lists and information, product, business, marketing and sales plans, research, studies and reports, sales, maintenance and production records, training materials and other marketing, sales and promotional information and (ii) clinical data, information included or supporting any Product Authorization, any regulatory filings, updates, notices and correspondence (including adverse event and other pharmacovigilance and other post-marketing reports and information, etc.), technical information, product development and operational data and records, and all other documents, records, files, data and other information, used in connection with the Product Commercialization Development Activities for such Product.

***“Product Standards”*** means all safety, quality and other specifications and standards applicable to any Product, including all pharmaceutical, biological and other standards promulgated by Standards Bodies.

***“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 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 any Lender, the percentage obtained by dividing (i) the sum of the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

***“Proposal Letter”*** means the Proposal Letter, dated June 14, 2018, between the Borrower and Perceptive Advisors LLC (as supplemented by the outline of proposed terms and conditions attached thereto).

***“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 or Bailee Letters.

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***“Recipient”*** means any Lender or any other recipient of any payment to be made by or on account of any Obligation.

***“Reference Rate”*** means One-Month LIBOR; provided that if One-Month LIBOR can no longer be determined by the Administrative Agent (in its sole discretion) or the Governmental Authority having jurisdiction over the quotation or determination of London Interbank Offered Rates causes to supervise or sanction such rates for purposes of interest rates on loans, then the Administrative Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to One-Month LIBOR 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” as published and defined in The Wall Street Journal.

***“Referral Source”*** has the meaning set forth in **Section 7.07(b)**.

***“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.

***“Regulatory Authority”*** means any Governmental Authority, whether U.S. or non-U.S., that is concerned with or has regulatory or supervisory oversight with respect to any Product or any Product Commercialization and Development Activities relating to any Product, including the FDA and all equivalent Governmental Authorities, whether U.S. or non-U.S.

***“Reinvestment Period”*** has the meaning set forth in **Section 3.03(b)**.

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

***“Responsible Officer”*** of any Person means each of the president, chief executive officer, chief financial officer 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 any Obligor 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 any Obligor or any of its Subsidiaries, any payment of interest, principal or fees in respect of any Indebtedness owed by any Obligor or any of its Subsidiaries to any holder of any Equity Interests of any Obligor or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of any Obligor or any of its Subsidiaries.

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**“Restrictive Agreement”** means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of any Obligor 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 in-bound 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(j)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of any Obligor 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 any other Obligor or any of its Subsidiaries or such other Obligor or to Guarantee Indebtedness of any other Obligor 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, as recognized on the income statement of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

**“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 where the Borrower is located or conducts business.

**“Secured Parties”** means the Lenders, the Administrative Agent and any of their respective permitted transferees or assigns.

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

**“Security Agreement”** means the Security Agreement, delivered pursuant to **Section 6.01(h)**, among the Obligors and the Administrative Agent, granting a security interest in the Obligors’ personal property in favor of the Administrative Agent, for the benefit of the Secured Parties.

**“Security Documents”** means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Secured Parties for purposes of securing the Obligations.

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

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**“Solvent”** means, as to any Person as of any date of determination, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**“Specified Acquisition/Licensing Transactions”** means the transactions contemplated by (i) the License Agreement, dated as of June 29, 2018, by and between Axis Therapeutics Limited and Xiangxue Life Sciences Ltd., (ii) the License Agreement, dated as of June 29, 2018, by and between the Borrower and Avalon Polytom (HK) Limited and (iii) the License and Supply Agreement, dated as of June 29, 2018, by and between the Borrower and Avalon HepaPOC Limited.

**“Standard Bodies”** means any of the organizations that create, sponsor or maintain safety, quality or other standards, including ISO, ANSI, CEN and SCC and the like.

**“Subsidiary”** means, with respect to any Person (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 direct or indirect 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.

**“Subsidiary Guarantors”** means each Subsidiary of the Borrower identified under the caption “SUBSIDIARY GUARANTORS” on the signature pages hereto and each Subsidiary of the Borrower that becomes, or is required to become, a “Subsidiary Guarantor” after the date hereof pursuant to **Section 8.12(a)** or **8.12(b)**.

**“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.

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**“Technical Information”** means all Product Related Information and, with respect to any Products or Product Commercialization and Development Activities, all related know-how, trade secrets and other proprietary or confidential information, any information of a scientific, technical, or business nature in any form or medium, Invention disclosures, all documented research, developmental, demonstration or engineering work, and all other technical data and information related thereto.

**“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 and (ii) 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.

**“United States”** or **“U.S.”** means the United States of America, its fifty states and the District of Columbia.

**“U.S. Person”** means a “United States Person” within the meaning of 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)**.

**“Warrant”** means that certain Warrant, dated as of the Closing Date and delivered pursuant to **Section 6.01(k)**, evidenced by an instrument substantially the form of **Exhibit J** hereto, as amended, replaced or otherwise modified pursuant to the terms thereof.

**“Warrant Obligations”** means all Obligations of Borrower arising out of, under or in connection with the Warrant.

**“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 and the Administrative Agent.

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***"Write-Down and Conversion Powers"*** means, 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.

**1.02 Accounting Terms and Principles.** 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. If the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then the Lenders and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such change or issuance.

**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";

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(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, to the knowledge of such Person, indirectly; and

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

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. Any definition or reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

If any payment required to be made 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 purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Obligors and their Subsidiaries will be deemed to be equal to 100% of the outstanding principal amount thereof or payment obligations with respect thereto at the time of determination thereof, or with respect to any Hedging Agreements, the amount that would be payable if the agreement governing such Hedging Agreements were terminated on the date of termination. 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.

## **SECTION 2. THE COMMITMENT AND THE LOANS**

### **2.01 Loans.**

(a) On the terms and subject to the conditions of this Agreement, each Lender agrees to make a Loan to the Borrower, in a single Borrowing on the Closing Date, in a principal amount equal to the amount of such Lender’s Commitment.

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

(c) 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 will be repayable solely in Dollars and no other currency.

**2.02 Borrowing Procedures.** At least three (3) Business Days prior to the Closing Date (or such shorter period agreed by the Administrative Agent), 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. (Eastern time) on a Business Day, shall be deemed to have been delivered on the next Business Day).

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

**2.04 Use of Proceeds.** The Borrower shall use the proceeds of the Loans to fund (i) in part, the Specified Acquisition/Licensing Transaction and (ii) for working capital and general corporate purposes, including the payment of fees and expenses associated with this Agreement.

### SECTION 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC.

**3.01 Scheduled Repayments and Prepayments Generally; Application.** There will be no scheduled repayments of principal on the Loans prior to the Maturity Date. On the Maturity Date the Borrower shall repay the entire remaining outstanding balance of the Loans in full and in cash. Except as otherwise provided in this Agreement, each payment (including each repayment and prepayment) by the Borrower (other than fees payable pursuant to the Fee Letter) will be deemed to be made ratably in accordance with the Lenders' Proportionate Shares.

**3.02 Interest.**

(a) **Interest Generally.** The outstanding principal amount of the Loans shall accrue interest at the Interest Rate.

(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 two and a half percent (2.5%) *per annum* (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "**Default Rate**"). If any Obligation (other than Warrant Obligations but including, without limitation, fees, costs and expenses payable hereunder) is not paid when due (giving effect to any applicable grace period) under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) **Interest Payment Dates.** Accrued interest on the Loans shall be payable in arrears on each Payment Date with respect to the most recently completed Interest Period in cash, 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 shall also be payable from time to time on demand by the Administrative Agent.

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### **3.03 Prepayments.**

#### **(a) Optional Prepayments.**

(i) Subject to prior written notice pursuant to **clause (ii)** below, the Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day for an amount equal to the sum of (A) the aggregate principal amount of the Loans being prepaid, (B) any accrued but unpaid interest on the principal amount of the Loans being prepaid and (C) any applicable Prepayment Fee (such aggregate amount, the "**Prepayment Price**").

(ii) A notice of optional prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than three (3) (nor more than five (5)) Business Days prior to the proposed prepayment date. Each notice of optional prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and any conditions to prepayment (if applicable).

(b) **Mandatory Prepayments.** Upon the occurrence of any Casualty Event or Asset Sale (that is not otherwise permitted by **Section 9.09**), the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) one hundred percent (100%) of the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, as the case may be, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee; provided that, so long as no Default has occurred and is continuing or shall result therefrom, if, within fifteen (15) Business Days following the occurrence of any such Casualty Event or Asset Sale, a Responsible Officer of the Borrower delivers to the Administrative Agent a notice to the effect that the Borrower or the applicable Subsidiary intends to apply the Net Cash Proceeds from such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, to reinvest in the business of the Borrower or any of its Subsidiaries (a "**Reinvestment**"), then such Net Cash Proceeds of such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event may be applied for such purpose in lieu of such mandatory prepayment to the extent such Net Cash Proceeds of such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event are actually applied for such purpose; provided, further, that, if such Casualty Event or Asset Sale occurs with respect to any Obligor, such Reinvestment shall be made in the business of an Obligor; provided, further, that, in the event that Net Cash Proceeds have not been so applied within three hundred sixty-five (365) days (the "**Reinvestment Period**") following the occurrence of such Casualty Event or Asset Sale (or, if the Borrower or any of its Subsidiaries has entered into a binding commitment prior to the last day of such Reinvestment Period to reinvest such proceeds no later than one hundred eighty (180) days following the last day of the Reinvestment Period, one hundred eighty (180) days after the expiry of the Reinvestment Period), the Borrower shall make a mandatory prepayment of the Loans in an aggregate amount equal to the sum of (i) one hundred percent (100%) of the unused balance of such Net Cash Proceeds received by any Obligor or any of its Subsidiaries with respect to such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee.

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(c) **Prepayment Fee.** Without limiting the foregoing, whenever the Prepayment Fee is in effect and payable pursuant to the terms hereof or any other Loan Document, such Prepayment Fee shall be payable on each prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (other than any prepayment pursuant to **Section 5.02**).

(d) **Partial Prepayments.** Prepayments shall be accompanied by accrued interest to the extent required by **Section 3.02**.

#### **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. (Eastern 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.** Notwithstanding anything herein to the contrary, following the occurrence and continuance of an Event of Default, all payments shall be applied as follows:

(A) first, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, expenses or other amounts (including fees and disbursements and other charges of counsel payable under **Section 14.03**) payable to the Administrative Agent in its capacity as such;

(B) second, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, costs, expenses and other amounts (other than principal and interest, but including fees and disbursements and other charges of counsel payable under **Section 14.03** and any Prepayment Fees) payable to the Lenders arising under the Loan Documents (other than the Warrant), ratably among them in proportion to the respective amounts described in this **clause (B)** payable to them;

(C) third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (C)** payable to them;

(D) fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (D)** payable to them;

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(E) fifth, in reduction of any other Obligation then due and owing, ratably among the Administrative Agent and the Lenders based upon the respective aggregate amount of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(F) sixth, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or such other Person as may be lawfully entitled to or directed by the Borrower to receive the remainder.

(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, and, in the case of any payment accruing interest, interest thereon shall continue to accrue and be payable for the period of such extension; 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) at any time held and other indebtedness at any time owing by the Administrative Agent, any Lender and any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmatured. Any Person exercising rights of set off hereunder agrees promptly to 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 pursuant to this **Section 4.03**, 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

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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 (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

## SECTION 5. YIELD PROTECTION, ETC.

### **5.01 Additional Costs.**

(a) **Change in Law Generally.** If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law, or any change in any 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 a 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 shall impose on a Lender (or its lending office) 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 of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, or subject any Lender to any Taxes on its Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto by an amount reasonably deemed by such Lender in good faith 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 a party to this Agreement), the adoption of any 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 a party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as

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a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved 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 promptly will 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 a 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 the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) 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 a party to this Agreement) the adoption of or any change in any 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 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 (notwithstanding anything herein to the contrary, without any Prepayment Fee) 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 any Law. If any 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 Laws and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that

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after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5**) 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 Laws, 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 the original or a certified copy of a receipt issued by 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 Lender.** 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), and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by 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 **Section 5.03(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

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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 Law as reasonably requested by the Borrower 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 (2) 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 would materially prejudice the legal or commercial position of such Lender.

(i) 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

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(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 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 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 Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Foreign Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Foreign 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 Foreign 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 Foreign Lender has complied with such Foreign Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment under FATCA. Solely for purposes of this **clause (D)**, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

(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** (including by the payment of additional amounts pursuant to this **Section 5**), 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** with

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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(g)** (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 the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **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** 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**

**6.01 Conditions to the Borrowing of the Loan.** The obligation of each Lender to make its Loan shall be subject to the execution and delivery of this Agreement by the parties hereto, the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, and the prior or concurrent satisfaction or waiver 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 (x) a copy of a good standing certificate, dated a date reasonably close to the Closing Date, for each such Person and (y) a certificate, dated as of the Closing Date, duly executed and delivered by such Person's Responsible Officer, as to:

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- (i) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by such Person and the Transactions;
  - (ii) the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by such Person; and
  - (iii) the full force and validity of each Organic Document of such Person and copies thereof;

upon 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 Responsible Officer of any such Person cancelling or amending the prior certificate of such Person.

(b) **Information Certificate.** The Administrative Agent shall have received a fully completed Information Certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower. All documents and agreements required to be appended to the Information Certificate, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties and shall be in full force and effect.

(c) **Closing Date Certificate.** The Administrative Agent shall have received a certificate, dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent (the "**Closing Date Certificate**"), duly executed and delivered by a Responsible Officer of the Borrower certifying that: (i) both immediately before and after giving effect to the borrowing 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 Default has occurred and is continuing, or could reasonably be expected to result from the making of the Loans being advanced, or the consummation of any Transactions contemplated to occur on the Closing Date, and (ii) all of the conditions set forth in **Section 6.01** shall have occurred or shall occur on the Closing Date (except to the extent waived in writing by the Administrative Agent).

(d) **Delivery of Notes.** The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to **Section 2.03** for the Loans duly executed and delivered by a Responsible Officer of the Borrower.

(e) **Financial Information, Etc.** The Administrative Agent shall have received:

- (i) audited consolidated financial statements of the Borrower and its Subsidiaries for each of the fiscal year ended December 31, 2017; and
- (ii) unaudited consolidated balance sheets of the Borrower and its Subsidiaries for each fiscal quarter ended after December 31, 2017 and at least ten (10) Business Days prior to the Closing Date, together with the related consolidated statement of operations, shareholder's equity and cash flows for such fiscal quarter.

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(f) [Reserved].

(g) **Solvency.** The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit K**, duly executed and delivered by the chief accounting officer of the Borrower, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent.

(h) **Security Documents.** The Administrative Agent shall have received executed counterparts of a Security Agreement, in form and substance reasonably acceptable to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by each Obligor, together with:

(i) delivery of all certificates (in the case of Equity Interests that are certificated securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by each Obligor that are required to be pledged and so delivered under the Security Agreement, 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 reasonably satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under the Security Agreement has been transferred to and perfected by the Administrative Agent and the Lenders 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 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 the Security Agreement;

(iii) UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person in any collateral described in the Security Agreement previously granted by any Person; and

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

(i) [Reserved].

(j) **Lien Searches.** The Administrative Agent shall be satisfied with Lien searches regarding the Borrower and the Subsidiary Guarantors made as of a date reasonably close to the Closing Date.

(k) **Warrant.** The Administrative Agent shall have received an executed counterpart of the Warrant.

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(l) **Insurance.** The Administrative Agent shall have received certified copies of the insurance policies (or binders in respect thereof), from one or more insurance companies satisfactory to the Administrative Agent, evidencing coverage required to be maintained pursuant to each Loan Document.

(m) **Opinions of Counsel.** The Administrative Agent shall have received one or more opinions, dated as of the Closing Date and addressed to the Administrative Agent and the Lenders, from independent legal counsel to the Borrower and the other Obligors, in form and substance reasonably acceptable to the Administrative Agent.

(n) **Fee Letter.** The Administrative Agent shall have received an executed counterpart of the Fee Letter, duly executed and delivered by the Borrower.

(o) **Closing Fees, Expenses, Etc.** Each of the Administrative Agent and each Lender shall have received for its own account, (i) the upfront fee as set forth in the Fee Letter, which shall be paid by way of the Administrative Agent retaining such amount from the proceeds of the Loan and (ii) all fees, costs and expenses due and payable to it pursuant to the Proposal Letter, the Fee Letter and **Section 14.03**, including all reasonable 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) in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Closing Date.

(p) **Material Adverse Change.** No Material Adverse Change shall have occurred since December 31, 2017.

(q) **Equity Transaction.** The Administrative Agent shall have received evidence that the Equity Transaction has been consummated.

(r) **Anti-Terrorism Laws.** The Administrative Agent shall have received, as applicable, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

## **SECTION 7. REPRESENTATIONS AND WARRANTIES**

The Borrower and each other Obligor hereby jointly and severally represents and warrants to the Administrative Agent and each Lender on the Closing Date as set forth below:

**7.01 Power and Authority.** Each Obligor and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except to the extent that failure to have the same could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (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 except where failure so to qualify could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (iv) has full power, authority and legal right to enter into 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.

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**7.02 Authorization; Enforceability.** Each Transaction to which an Obligor is a party (or to which it or any of its assets or properties is subject) are within such Obligor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against such Obligor 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.** None of the Transactions (i) requires any Governmental Approval of, registration or filing with, or any other action by, any Governmental Authority or any other Person, except for (x) such as have been obtained or made and are in full force and effect and (y) filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents, (ii) will violate (1) any Law, (2) any Organic Document of any Obligor or any of its Subsidiaries or (3) any order of any Governmental Authority, that in the case of **clause (ii)(1) or clause (ii)(3)**, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (iii) will violate or result in a default under any Material Agreement binding upon any Obligor or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or (iv) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of any Obligor or any of its Subsidiaries.

**7.04 Financial Statements; Material Adverse Change.**

(a) **Financial Statements.** The Borrower has heretofore furnished to the Administrative Agent (who shall forward to the Lenders) certain consolidated financial statements as provided for in **Section 6.01(e)**. Such financial statements, and all other financial statements delivered by the Borrower pursuant hereto present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements of the type described in **Section 8.01(a)**. Neither the Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change.** Since December 31, 2017, there has been no Material Adverse Change.

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## 7.05 Properties.

(a) **Property Generally.** Each Obligor and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, including all properties and assets, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities and all Material Intellectual Property, subject only to Permitted Liens and except for minor defects in title that (i) do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and (ii) could not reasonably be expected to prevent or interfere with the ability of any Obligor or any of its Subsidiaries to conduct any Product Commercialization and Development Activities with respect to any of its Products in any material respect.

(b) **Intellectual Property.**

(i) The Borrower or one of its Subsidiaries, as applicable, is the beneficial owner of all right, title and interest in and to its Material Intellectual Property, free and clear of any Liens or Claims other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(i)**:

(A) other than (1) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, or (2) as would have been or is permitted by **Section 9.09**, there are no judgments, covenants not to sue, grants, Liens (other than Permitted Liens), or other Claims, agreements or arrangements relating to any Material Intellectual Property, which materially restrict any Obligor or any of its Subsidiaries with respect to its use of any Material Intellectual Property in connection with such Person's Product Commercialization and Development Activities;

(B) the use by the Borrower or any of its Subsidiaries of any of their respective Material Intellectual Property in the ordinary course of such Person's businesses does not, in any material respect, violate, infringe or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person;

(C) (1) there are no pending Claims, or Claims threatened in writing against such Obligor or any of its Subsidiaries asserted by any other Person relating to any of such Person's Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, or violation with Material Intellectual Property owned by an Obligor or any of its Subsidiaries; and (2) no Obligor or any of its Subsidiaries has received any notice from, or Claim by, any Person that the use of Material Intellectual Property owned by an Obligor or any of its Subsidiaries, or any Product Commercialization and Development Activities with respect to any Product, infringes upon, violates or constitutes a misappropriation of, any Intellectual Property of any other Person in any material respect;

(D) no Obligor has knowledge that any Material Intellectual Property owned, licensed or used by such Obligor or any of its Subsidiaries is being infringed, violated, or misappropriated by any other Person in any material respect; and neither such Obligor nor any of its Subsidiaries has put any other Person on notice of such actual or potential infringement, violation or misappropriation of any such Material Intellectual Property, and such Obligor has not initiated the enforcement of any Claim with respect to any such Material Intellectual Property;

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(E) to the knowledge of the Obligor, all relevant current and former employees and contractors that develops Material Intellectual Property on behalf of the Obligor and each of its Subsidiaries has executed written confidentiality and invention assignment Contracts with such Obligor or Subsidiary, as applicable, that irrevocably assigns to such Obligor or Subsidiary, as applicable, or its designee all rights of such employees and contractors to any such Intellectual Property, except as would vest initially in the Obligor or its Subsidiary by operation of Law;

(F) each Obligor and each of its Subsidiaries has taken reasonable precautions to protect the secrecy, confidentiality and value of its Material Intellectual Property consisting of trade secrets and confidential information; and

(ii) With respect to Material Intellectual Property consisting of Patents, except as set forth in **Schedule 7.05(b)(ii)**, and without limiting the representations and warranties in **Section 7.05(b)(i)**:

(A) each of the issued claims in such Patents is valid and enforceable;

(B) subsequent to the issuance of such Patents, no Obligor nor any of its Subsidiaries or 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;

(C) to the knowledge of the Obligor, no allowable or allowed subject matter 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, and are not and have not been the subject of any re-examination, opposition or any other post-grant proceedings, nor is any Obligor or its Subsidiaries aware of any basis for any such interference, re-examination, opposition, *inter partes* review, post grant review, or any other post-grant proceedings;

(D) 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 with respect to any such Patents, no Obligor nor any of its Subsidiaries has received any written notice asserting that such Patents are invalid, unpatentable or unenforceable;

(E) 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.

(iii) The Obligors own or hold rights to use all Intellectual Property necessary to conduct the ongoing Product Commercialization and Development Activities relating to the Products, in all material respects (and provided that the foregoing will not be construed as a representation or warranty with respect to non-infringement of Intellectual Property).

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## **7.06 No Actions or Proceedings.**

(a) **Litigation.** There is no litigation, investigation or proceeding pending or, to the knowledge of any Obligor or any of its Subsidiaries threatened in writing, with respect to such Obligor or any such Subsidiaries by or before any Governmental Authority or arbitrator that, (i) if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (ii) involves this Agreement or any other Loan Document.

(b) **Environmental Matters.** The operations and the real property of each Obligor 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 a Material Adverse Effect.

(c) **Labor Matters.** No Obligor or any of its Subsidiaries has engaged in unfair labor practices as defined in 29 U.S.C. § 152(8) and 158 of the National Labor Relations Act and there are no pending or threatened in writing labor actions, disputes, grievances, arbitration proceedings, or similar Claims or actions involving the employees of any Obligor or any of its Subsidiaries, in each case that could reasonably be expected to have a Material Adverse Effect. There are no strike or work stoppages in existence or threatened in writing against any Obligor ant to the knowledge of such Obligor, no union organizing activity is taking place.

## **7.07 Compliance with Laws and Agreements.**

(a) Each Obligor is in compliance with all Laws and all Contracts binding upon it or its property, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing. The Obligors and their Subsidiaries are, and all Product Commercialization and Development Activities of such Persons are being conducted, in material compliance with all applicable Healthcare Laws.

(b) To the knowledge of the Obligors and their respective Subsidiaries, any physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to the Borrower, any other Obligor or any Subsidiaries (collectively, a “**Referral Source**”) who has a direct ownership, investment, or financial interest in the Borrower, any other Obligor or any such Subsidiary paid fair market value for such ownership, investment or financial interest; any ownership or investment returns distributed to any Referral Source is in proportion to such Referral Source’s ownership, investment or financial interest; and 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 business. No Obligor, 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, any other Obligor or any such Subsidiary.

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(c) Without limiting the generality of the foregoing:

(i) To the knowledge of the Obligors and their respective Subsidiaries (after due inquiry), on the one hand, and any Referral Source, on the other hand (a) comply, in all material respects, with all applicable Healthcare Laws including, without limitation, the Federal Anti-Kickback Statute, the Stark Law and other applicable anti-kickback and self-referral laws, whether U.S. or non-U.S.; (b) reflect fair market value, have commercially reasonable terms, and were negotiated at arm's length; and (c) do not obligate the Referral Source to purchase, use, recommend or arrange for the use of any products or services of any Obligor or any of its Subsidiaries; and

(ii) each Obligor and each of its Subsidiaries have implemented policies and procedures to monitor, collect, and report any payments or transfers of value to certain healthcare providers and teaching hospitals, in accordance, in all material respects, with industry standards and the Affordable Care Act of 2010 and the Physician Payments Sunshine Act and their implementing regulations and state disclosure and transparency laws.

**7.08 Taxes.** Except as set forth on **Schedule 7.08**, each Obligor and 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 (a) taxes that are being contested in good faith by appropriate proceedings and for which such Obligor or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to have an Material Adverse Effect.

**7.09 Full Disclosure.** None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Obligors or any of their Subsidiaries to the Administrative Agent (on behalf of itself and the Lenders) 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, and it being understood that such projected financial information and all other forward looking information are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from such projected results and that the differences may be material.

**7.10 Investment Company Act and Margin Stock Regulation.**

(a) **Investment Company Act.** No Obligor 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.** No Obligor 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, U or X.

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**7.11 Solvency.** The Obligors, on a consolidated basis, are and, immediately after giving effect to the making of the Loans, the use of proceeds thereof, and the consummation of the Transactions, will be, Solvent.

**7.12 Subsidiaries.** Set forth on **Schedule 7.12** is a complete and correct list of all direct and indirect Subsidiaries of the Borrower. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by each Obligor of each such Subsidiary thereof is as shown in said **Schedule 7.12**.

**7.13 Indebtedness and Liens.** Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of each Obligor and each of its Subsidiaries outstanding as of the Closing Date. Set forth on **Schedule 7.13(b)** is a complete and correct list of all Liens granted by the Obligors and each of their respective Subsidiaries with respect to their respective property and outstanding as of the Closing Date.

**7.14 Material Agreements.** Set forth on **Schedule 7.14** is a complete and correct list, as of the Closing Date, of each Material Agreement. Accurate and complete copies of each Contract disclosed on such schedule have been made available to the Administrative Agent. No Obligor or any of its Subsidiaries is in material default under any such Material Agreement, nor does any Obligor have knowledge of (i) any Claim against it or any of its Subsidiaries for any material breach of any such Material Agreement or (ii) any material default by any party to any such Material Agreement.

**7.15 Restrictive Agreements.** Except as set forth in **Schedule 7.15**, as of the Closing Date, no Obligor or any of its Subsidiaries is subject to any Restrictive Agreement, except (i) those permitted under **Section 9.11**, (ii) restrictions and conditions imposed by Law or by this Agreement, (iii) any stockholder agreement, charter, by-laws, or other organizational documents of an Obligor or any of its Subsidiaries as in effect on the date hereof and (iv) limitations associated with Permitted Liens.

**7.16 Real Property.** Except as set forth in **Schedule 7.16**, no Obligor owns or leases (as tenant thereof) any real property as of the Closing Date.

**7.17 Pension Matters.** **Schedule 7.17** sets forth, as of the Closing Date, 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 Laws 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 is in compliance with applicable provisions of ERISA, the Code and other Laws, (y) there are no existing or pending (or to the knowledge of any Obligor or any of its Subsidiaries, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim 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

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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 neither any Obligor nor any of its 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. As of the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

#### **7.18 Regulatory Approvals.**

(a) Each Obligor and each of its Subsidiaries holds, and will continue to hold, either directly or through licensees and agents, all Product Authorizations necessary or required for the Borrower and each of its Subsidiaries to conduct, in all material respects, their respective operations and businesses in the manner currently conducted and to conduct its Product Commercialization and Development Activities.

(b) No Obligor or its Subsidiaries has received any written notice from the FDA or any Governmental Authority that it is considering suspending, revoking or materially limiting any Product Authorization. The Obligors and their Subsidiaries have made all material required and notices, registrations and reports (including field alerts or other reports of adverse experiences) and other filings with respect to each such Person's Products and Product Commercialization and Development Activities.

(c) Except as set forth on **Schedule 7.18(c)**, and without limiting the generality of any other representation or warranty made by any Obligor hereunder or under any other Loan Document: (i) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensors or licensees have received any inspection reports, warning letters or notices or similar documents with respect to any Product or any Product Commercialization and Development Activities from any Regulatory Authority within the last two (2) years that asserts material lack of compliance with any applicable Healthcare Laws or Product Authorizations; (ii) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensors or licensees have received any material notification from any Regulatory Authority within the last two (2) years, asserting that any Product or any Product Commercialization and Development Activities lacks a required Product Authorization; (iii) there is no pending regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) against any Obligor, any of its Subsidiaries or, to the knowledge of any Obligor, any of their respective suppliers, licensors or licensees with respect to any Product or any Product Commercialization and Development Activities, and, to the knowledge of any Obligor, there is no basis in fact for any material adverse regulatory action against such Obligor or any of its Subsidiaries or, to the knowledge of any Obligor, any of their respective suppliers, agents, licensors or licensees with respect to any Product or any Product Commercialization and Development Activities; and (iv) without limiting the foregoing, (A) (1) there have been no material product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, undertaken or issued by any Obligor or any of its Subsidiaries, whether voluntary, at the request, demand or

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order of any Regulatory Authority or otherwise, with respect to any Product, any Product Commercialization and Development Activities or any Product Authorization within the last two (2) years, (2) no such product recall, safety alert, correction, withdrawal, marketing suspension, removal or the like has been requested, demanded or ordered by any Regulatory Authority within the last two (2) years, and, to the knowledge of any Obligor, there is no basis in fact for the issuance of any such product recall, safety alert, correction, withdrawal, marketing suspension, removal or the like with respect to any Product or any Product Commercialization and Development Activities, and (B) no criminal, injunctive, seizure, detention or civil penalty action has been commenced or threatened in writing by any Regulatory Authority within the last two (2) years with respect to or in connection with any Product or any Product Commercialization and Development Activities, and there are no consent decrees (including plea agreements) that relate to any Product or any Product Commercialization and Development Activities, and, to the knowledge of each Obligor, there is no basis in fact for the commencement of any criminal injunctive, seizure, detention or civil penalty action by any Regulatory Authority relating to any Product or any Product Commercialization and Development Activities or for the issuance of any consent decree. No Obligor nor any of its Subsidiaries, nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensees or licensors, is employing or utilizing the services of any individual, in connection with Product Commercialization and Development Activities, who has been debarred from any federal healthcare program.

**7.19 Transactions with Affiliates.** Except as set forth on **Schedule 7.19**, no Obligor nor any of its Subsidiaries has entered into, renewed, extended or been a part to, any transaction (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.

**7.20 OFAC.** Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction in violation of Sanctions, or (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. No Loan, nor the proceeds from any Loan, has been or will be used, directly or, to the knowledge of the Borrower, indirectly, to lend, contribute or provide to, or has been or will be otherwise made available for the purpose of funding, any activity or business in any Designated Jurisdiction in violation of Sanctions or for the purpose of funding any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, in violation of Sanctions, or in any other manner that will result in any violation by any party to this Agreement of Sanctions.

**7.21 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, directly or, to the knowledge of the Borrower, indirectly, has (i) materially violated or is in material violation of any applicable anti-corruption Law, or (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or, to the knowledge of the Borrower, indirectly, any Prohibited Payment.

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**7.22 [Reserved].**

**7.23 Priority of Obligations.** The Obligations constitute unsubordinated obligations of the Obligors, and except for any obligations which have priority under applicable Law, rank at least pari passu in right of payment with all other unsubordinated Indebtedness of the Obligors.

**7.24 Royalty and Other Payments.** Except as set forth on **Schedule 7.24**, no Obligor, nor any of its Subsidiaries, is obligated 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, any other Obligor, nor any of their respective Subsidiaries, nor any of their respective directors, officers or employees, is subject to a non-compete agreement that prohibits or will interfere with any of the Product Commercialization and Development Activities, including the development, commercialization or marketing of any Product.

**7.26 [Reserved].**

**7.27 Reimbursement from Medical Reimbursement Programs.** Each Obligor has the requisite provider number to bill Medicare (to the extent such Person participates in Medicare), the respective Medicaid program in the state or states in which such Person operates (to the extent such Person participates in the Medicaid program in such state or states), and all other commercial payor programs currently bills. There is no investigation, audit, claim review, or other action pending with respect to any Obligor or, to the knowledge of any Obligor, threatened in writing which could reasonably be expected to result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of any provider number issued to any Obligor or result in the exclusion of any Obligor from Medicare or Medicaid, nor is there any action pending or, to any Obligor's knowledge, threatened in writing, pursuant to which any Governmental Authority seeks to impose material sanctions with respect to such Obligor's business.

## **SECTION 8. AFFIRMATIVE COVENANTS**

Each Obligor covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and 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 will furnish to the Administrative Agent:

(a) as soon as available and in any event within forty-five (45) days after the end of the first three (3) fiscal quarters of each fiscal year (or sixty (60) days, in the case of the fourth fiscal quarter) (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate

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of a Responsible Officer of the Borrower stating that (x) such financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and (y) the results of operations of the Borrower and its Subsidiaries for the period ended on such date have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this Section **8.01(a)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR” (with the related certificate separately delivered);

(b) as soon as available and in any event within ninety (90) days after the end of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal year and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of Deloitte & Touche LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit, and in the case of such consolidating financial statements, certified by a Responsible Officer of the Borrower; provided that documents required to be furnished pursuant to this Section **8.01(b)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR”;

(c) together with the financial statements required pursuant to **Sections 8.01(a)** and **(b)**, a compliance certificate signed by the chief financial or accounting Responsible Officer of the Borrower as of the end of the applicable accounting period (which delivery may be by electronic communication including fax or email and shall be deemed to be an original, authentic counterpart thereof for all purposes) substantially in the form of **Exhibit E** (a **“Compliance Certificate”**) including details of any issues that are material that are raised by auditors and any occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.07**, **Section 7.18** or **Section 7.23** to be incorrect in any material respect (or in any respect if such representation or warranty is qualified by materiality or by reference to Material Adverse Effect or Materia Adverse Change) if such representation or warranty were to be made at the time of delivery of a Compliance Certificate. For the avoidance of doubt, no representation or warranty contained in **Section 7.07**, **Section 7.18** or **Section 7.23** is required to be, shall be or shall be deemed to be made in connection with a delivery of any Compliance Certificate;

(d) after being prepared by the Borrower and approved by its Board, and promptly following the Administrative Agent's request therefor, a consolidated financial forecast for the Borrower and its Subsidiaries for the fiscal year to which such forecast relates; provided that, for each fiscal year, on or before the sixtieth (60th) day following the beginning of such fiscal year, the Borrower shall prepare, and its Board shall approve such consolidated financial forecast for such fiscal year, and the Borrower shall notify the Administrative Agent promptly after the Board has given such approval;

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(e) promptly after the same are released, copies of all press releases; provided that documents required to be furnished pursuant to this Section **8.01(e)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR”;

(f) promptly, and in any event within five (5) Business Days after receipt thereof by an Obligor thereof, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which the Borrower 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 such Obligor; provided that documents required to be furnished pursuant to this Section **8.01(f)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR”;

(g) 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 each Obligor and its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which any Obligor or its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which such Obligor or such Subsidiary, as applicable, may become subject from time to time; 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”;

(h) the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**;

(i) as soon as possible and in any event within five (5) Business Days after the Borrower obtains knowledge of any Claim related to any Product or inventory involving more than \$2,500,000 (or the Equivalent Amount in other currencies), written notice thereof from a Responsible Officer of the Borrower which notice shall include a statement setting forth details of such return, recovery, dispute or claim;

(j) within forty-five (45) calendar days following the end of each fiscal quarter, evidence satisfactory to the Administrative Agent, based upon the Borrower’s bank account statements that the Borrower has met its minimum liquidity requirement set out in **Section 10.01**.

(k) such other information respecting the businesses, financial performance, operations condition of the assets or liabilities of the Obligors (including with respect to the Collateral), taken as a whole, as the Administrative Agent may from time to time reasonably request;

provided that, notwithstanding the foregoing, the Borrower covenants and agrees that neither the Borrower, nor any other Person acting on its behalf, will provide, or be obligated to provide, the Administrative Agent or any Lender or their respective representatives and agents with any information that the Borrower reasonably believes constitutes material non-public information, unless prior thereto such Person shall have confirmed to the Borrower in writing that it consents to receive such information and confirms that it shall be in compliance with all applicable securities laws with respect to the receipt and use of such information. The Borrower acknowledges and confirms that each Secured Party shall be relying on the foregoing covenant in effecting transactions in securities of the Borrower.

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**8.02 Notices of Material Events.** The Borrower will furnish to the Administrative Agent written notice of the following (x) with respect to **clause (a)** below within three (3) Business Days and (y) with respect to **clause (b)** through **(m)** below, within fifteen (15) Business Days, in each case, after a Responsible Officer of the Borrower first learns of or acquires knowledge with respect to:

- (a) the occurrence of any Default;
- (b) the occurrence of any event with respect to the property or assets of the Borrower or any of its Subsidiaries resulting in a Loss aggregating \$2,500,000 (or the Equivalent Amount in other currencies) or more;
- (c) (i) any proposed acquisition of stock, assets or property by the Borrower or any of its Subsidiaries that could reasonably be expected to result in material environmental liability under applicable Environmental Laws, and (ii) any spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material by the Borrower or any of its Subsidiaries required to be reported to any Governmental Authority and that could reasonably be expected to result in material liability under applicable Environmental Laws;
- (d) the assertion of any Claim under any Environmental Law by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations issued pursuant to Environmental Laws which could reasonably be expected to involve damages in excess of \$2,500,000 (or the Equivalent Amount in other currencies) other than any such Claim or alleged violation that, if adversely determined, could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect;
- (e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (f) (i) the intention of any ERISA Affiliate to file any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) the filing by any ERISA Affiliate of a request for a minimum funding waiver under Section 412 of the Code with respect to any Title IV Plan or Multiemployer Plan, in each case in writing and in reasonable detail (including a description of any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto);
- (g) (i) the termination of any Material Agreement other than in accordance with its terms and not as a result of a breach or default, (ii) the receipt by the Borrower or any of its Subsidiaries of any notice of a material breach or default under any Material Agreement (and a copy thereof) asserting a default by such Obligor or any of its Subsidiaries where such alleged default would permit such counterparty to terminate such Material Agreement, (iii) the entering into of any new Material Agreement by any Obligor (and a copy thereof) or (iv) any material amendment to a Material Agreement that would be adverse in any material respect to the Lenders (and a copy thereof).

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(h) any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries;

(i) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving an Obligor;

(j) any licensing agreement or arrangement entered into by the Borrower or any of its Subsidiaries in connection with any Claim of infringement or alleged infringement by the Borrower or any of its Subsidiaries of any Intellectual Property of another Person; provided that such agreement or arrangement would otherwise qualify as a Material Agreement hereunder;

(k) the creation, development or other acquisition of any Material Intellectual Property by the Borrower or any Subsidiary after the Closing Date that is registered or becomes registered or the subject of an application for registration with any Governmental Authority; provided that, with respect to any such Material Intellectual Property created, developed or acquired in any fiscal year, notice thereof pursuant to this **Section 8.02(k)** shall be made in accordance with the timing of the financial statements for such fiscal year required pursuant to **Section 8.01(b)**;

(l) any change to any Obligor's or any of its Subsidiaries' ownership of any Controlled Account, by delivering the Administrative Agent a notice setting forth a complete and correct list of all such accounts as of the date of such change; and

(m) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

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. Notwithstanding the foregoing, the Borrower covenants and agrees that neither the Borrower, nor any other Person acting on its behalf, will provide, or be obligated to provide, the Administrative Agent or any Lender or their respective representatives and agents with any information that the Borrower reasonably believes constitutes material non-public information, unless prior thereto such Person shall have confirmed to the Borrower in writing that it consents to receive such information and confirms that it shall be in compliance with all applicable securities laws with respect to the receipt and use of such information. The Borrower acknowledges and confirms that each Secured Party shall be relying on the foregoing covenant in effecting transactions in securities of the Borrower.

**8.03 Existence.** Such Obligor shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

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**8.04 Payment of Obligations.** Such Obligor will, and will 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 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 lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien.

**8.05 Insurance.** Such Obligor will, and will 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, it being understood and agreed that the insurance held by the Borrower and each of its Subsidiaries on the Closing Date is deemed to fulfill this requirement on the date hereof. Upon the request of the Administrative Agent, the Borrower shall furnish the Administrative Agent from time to time with (i) material information as to the insurance carried by it 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. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Secured Parties to renew any such policies, cause the coverages 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, the Borrower will be responsible for the reasonable and documented cost of such insurance (to be payable on demand). The amount of any such reasonable and documented expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

**8.06 Books and Records; Inspection Rights.** Such Obligor will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct (in all material respects) entries are made of all dealings and transactions in relation to its business and activities. Such Obligor will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or the Lenders, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and independent accountants, during normal business hours (but not more often than once a year unless an Event of Default has occurred and is continuing) as the Administrative Agent or the Lenders may request; provided that such representative shall use its commercially reasonable efforts to minimize disruption to the business and affairs of the Borrower as a result of any such visit, inspection, examination or discussion. Notwithstanding anything to the contrary contained herein, no Obligor nor any of its Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by any applicable Law or any binding agreement with a third party (so long as such agreement is not entered into in contemplation of this Agreement) or (ii) that is subject to attorney-client or similar privilege, which could reasonably be expected to be lost or forfeited if disclosed to the Administrative Agent or any Lender. The Borrower shall pay all reasonable and documented costs of all such inspections.

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**8.07 Compliance with Laws and Other Obligations.** Such Obligor will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Environmental Laws ) applicable to it and its business activities, (ii) comply in all material respects with all Healthcare Laws and Governmental Approvals (including Product Authorizations) applicable to it and its business activities and (iii) maintain in full force and effect, remain in compliance with, and perform all obligations under all Material Agreement to which it is a party, except, in the case of **clause (i)** and **(iii)** above, where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**8.08 Maintenance of Properties, Etc.** Such Obligor shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, including all assets and properties, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities, necessary or useful in the 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 and except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**8.09 Licenses.** Such Obligor shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties (including its Product Commercialization and Development Activities), except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**8.10 [Reserved].**

**8.11 Use of Proceeds.** The proceeds of the Loans will be used only as provided in **Section 2.04**. No part of the proceeds of the Loans will 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 Regulations T, U and X.

**8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.**

(a) **Subsidiary Guarantors, etc.** Subject to **clauses (c)** and **(d)** below and the terms and provisions of the Intercompany Subordination Agreement, in the event that the Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary, the Borrower shall promptly:

(i) cause such new Subsidiary to become a “Subsidiary Guarantor” hereunder pursuant to a Guarantee Assumption Agreement and a “Grantor” under the Security Agreement;

(ii) take such action or cause such Subsidiary to take such action (including joining the Security Agreement and delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably necessary or desirable or reasonably requested by the Administrative Agent in order

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to create and perfect, in favor of the Administrative Agent, for the benefit of the Secured Parties, valid and enforceable first priority Liens on substantially all of the personal property of such new Subsidiary as collateral security for the Obligations hereunder; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents and the Intercompany Subordination Agreement;

(iii) to the extent that the parent of such Subsidiary is not a party to the Security Agreement or has not otherwise pledged Equity Interests in its Subsidiaries in accordance with the terms of the Security Agreement and this Agreement, cause the parent (if possible) of such Subsidiary to execute and deliver a pledge agreement in favor of the Administrative Agent, for the benefit of the Secured Parties, in respect of all outstanding issued shares of such Subsidiary;

(iv) deliver such proof of corporate action, incumbency of officers, and other applicable documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** or as the Administrative Agent shall reasonably request; and

(v) cause each new Subsidiary (other than any Subsidiary that is neither an Obligor nor a Pledged Entity) to become a party to the Intercompany Subordination Agreement.

(b) **Further Assurances.** Subject to **clauses (c) and (d)** below and the terms and provisions of the Intercompany Subordination Agreement:

(i) such Obligor will 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 Security Agreement; and

(ii) in the event that such Obligor acquires Intellectual Property during the term of this Agreement, then the provisions of this Agreement and the Security Agreement shall automatically apply thereto and any such 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 acquisition; and

(iii) without limiting the generality of the foregoing, each Obligor will, and will cause each Person that is required to be a Subsidiary Guarantor to, take such action from time to time (including joining the Security Agreement and delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) 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 personal property (other than Excluded Assets (as defined in the Security Agreement)) of such Obligor as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents; provided, further that, without limiting the right of the Administrative Agent to require a Lien or security interest in any newly acquired or created Subsidiary or asset, upon the prior written request of the Borrower, the Borrower and the Administrative Agent shall consult, in good faith, as to whether the cost of obtaining a Lien or security interest thereon would be unreasonably excessive relative to the benefit thereof.

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(c) **CFCs, etc.** Any term or provision of this **Section 8.12** to the contrary notwithstanding, (x) no Subsidiary that is a (i) CFC, (ii) CFC Holding Company or (iii) Domestic Subsidiary of either of the foregoing, shall be required to become a Subsidiary Guarantor, and (y) the Obligors shall not be required to pledge (or cause to be pledged) to the Administrative Agent, for the benefit of the Secured Parties, Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company; **provided**, that the above restrictions shall apply only to the extent the Borrower reasonably determines (after consultation with the Administrative Agent) that the failure to impose such restrictions could reasonably be expected to generate a material current or future income inclusion to the Borrower or any of its Domestic Subsidiaries (as determined in good faith from time to time).

(d) **Limitations on Certain Obligations.** Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, no Obligor shall be required to enter into or obtain any mortgage, deed of trust, leasehold mortgage or any similar agreement in respect to any fee interest or leasehold interest in real property.

**8.13 Termination of Non-Permitted Liens.** In the event that any Obligor shall become aware of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of such Obligor or any of its Subsidiaries, which Lien is not a Permitted Lien, such Obligor shall use its commercially reasonable efforts to promptly terminate or cause the termination of such Lien.

**8.14 [Reserved].**

**8.15 [Reserved].**

**8.16 Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc.** With respect to the Products and all Product Commercialization and Development Activities, such Obligor will, and will cause each of its Subsidiaries (to the extent applicable) to, (i) maintain in full force and effect all Regulatory Approvals, Material Agreements, Material Intellectual Property and other rights, interests or assets (whether tangible or intangible) reasonably necessary for the operations of such Person's business, except as could not reasonably be expected to have a Material Adverse Effect, (ii) promptly after obtaining knowledge thereof, notify the Administrative Agent of any product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, to be undertaken or issued, by such Obligor, any of its Subsidiaries or any of their respective agents, suppliers, licensors or licensees, as the case may be, whether voluntary or at the request, demand or order of any Regulatory Authority or otherwise with respect to any Product or any Product Commercialization and Development Activities, or any basis for undertaking or issuing any such action or item, (iii) maintain in full force and effect, and pay all costs and expenses relating to, such Regulatory Approvals, Material Agreements and Material Intellectual Property owned, used or controlled by such Obligor or any such Subsidiary that are used in or necessary for any related Product Commercialization and Development Activities, except as could not be reasonably expected to have a Material Adverse Effect, (iv) promptly after obtaining knowledge thereof, notify the Administrative Agent of any infringement or other violation by any Person of such Obligor's or any such Subsidiaries' Material Intellectual Property, and pursue any such infringement or other

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violation, except in any specific circumstance where both (x) the Borrower is able to demonstrate to the reasonable satisfaction Administrative Agent that it is not commercially reasonable to do so and (y) where not doing could not reasonably be expected to have a Material Adverse Effect on any Product or the Product Commercialization and Development Activities related to such Product, (v) use commercially reasonable efforts to pursue and maintain in full force and effect registrations for Material Intellectual Property created, developed or acquired by any Obligor or any of its Subsidiaries, as the case may be, that is used in or necessary for the operations of the business of such Person, or in connection with any Product Commercialization and Development Activities relating to any Product and except where not doing so could not be reasonably expected to result in a Material Adverse Effect, and (vi) promptly after obtaining knowledge thereof, notify the Administrative Agent of any Claim by any Person that the conduct of the business of any Obligor or any of its Subsidiaries, including in connection with any Product Commercialization and Development Activities, has infringed upon any Intellectual Property of such Person, where such Claim, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

**8.17 ERISA Compliance.** Such Obligor shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA with respect to any Plans to which such Obligor or such Subsidiary is a party as an employer in all material respects.

**8.18 Cash Management.** Such Obligor shall, and shall cause each of its Subsidiaries to:

(a) maintain at all times at least 60% of the aggregate cash of the Borrower and its Subsidiaries in deposit accounts, disbursement accounts, investment accounts (and other similar accounts) and lockboxes with a bank or financial institution within the U.S. 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 and other rights and interests 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, each Obligor shall cause all payments constituting proceeds of accounts to be directed into lockbox accounts under agreements in form and substance satisfactory to the Administrative Agent

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#### **8.19 Post-Closing Obligations.**

(a) **Account Controlled Accounts.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) (the “**Account Control Agreement Completion Date**”), the Administrative Agent shall have received evidence that (i) all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of each Obligor located within the U.S. are Controlled Accounts and (ii) 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.

(b) **Financial Covenant Compliance.** On the Account Control Agreement Completion Date, the Administrative Agent shall have received written evidence reasonably satisfactory to it that, as of the Account Control Agreement Completion Date, the Borrower is in compliance with **Sections 10.01** and **8.18(a)**.

(c) **Real Property Security Documents.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Borrower shall use commercially reasonable efforts to obtain (i) Landlord Consents with respect to (x) the lease of Athenex Pharma Solutions, LLC for property located at 11342 Main Street, Clarence, New York 14031 and (y) the lease of the Borrower for property located at Coventus Building, 1001 Main Street, Suite 600, Buffalo, New York 14203 and (ii) a Bailee Letter from Dohmen Life Science Services in respect of inventory of Athenex Pharmaceutical Division, LLC at 4580 S. Mendenhall Road, Memphis, Tennessee 38141.

(d) **Intercompany Subordination Agreement.** Subject to applicable Law, within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Obligors shall, and shall cause its Subsidiaries to, duly execute and deliver the Intercompany Subordination Agreement or such other subordination agreement in form and substance reasonably satisfactory to the Administrative Agent.

(e) **Insurance.** Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), all such insurance policies required pursuant to **Section 6.01(l)** shall name the Administrative Agent (for its benefit and the benefit of the Lenders) loss payee or additional insured, as applicable, and provide that no cancellation of the policies will be made without at least ten (10) days prior written notice to the Administrative Agent.

(f) **Foreign Law and Polymed Security Documents.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Borrower shall (i) duly execute and deliver foreign law Security Documents in form and substance reasonably satisfactory to the Administrative Agent pursuant to which 65% of the Equity Interests of all directly owned Foreign Subsidiaries of the Borrower shall be pledged to the Administrative Agent for the benefit of the Secured Parties and (ii) cause to be executed and delivered a Security Document in form and substance reasonably satisfactory to the Administrative Agent pursuant to which all of the Equity Interests of Polymed Therapeutics, Inc. shall be pledged to the Administrative Agent for the benefit of the Secured Parties, in each case, together with proof of corporate action, incumbency of officers, customary opinions of counsel and other applicable documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01**.

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## SECTION 9. NEGATIVE COVENANTS

Each Obligor covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made) have been indefeasibly paid in full in cash:

**9.01 Indebtedness.** Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

- (a) the Obligations;
- (b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(a)** and Permitted Refinancings thereof; provided that, if such Indebtedness is intercompany Indebtedness, such Indebtedness shall be subject to the Intercompany Subordination Agreement in accordance with **clauses (e) to (h)** below;
- (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 such Obligor'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) Indebtedness of an Obligor owing to any other Obligor or a Pledged Entity owing to any other Pledged Entity, in each case subject to the Intercompany Subordination Agreement;
- (f) Indebtedness of any Subsidiary that is neither an Obligor nor a Pledged Entity owing to any other Subsidiary that is neither an Obligor nor a Pledged Entity;
- (g) Indebtedness of any Obligor or any Pledged Entity owing to any Subsidiary that is not an Obligor, subject to the Intercompany Subordination Agreement;
- (h) Indebtedness of any Subsidiary owing to any Obligor or any Pledged Entity in connection with any Product Commercialization and Development Activities in an aggregate outstanding principal amount not to exceed an amount (without double counting Indebtedness pursuant to this **Section 9.01(h)**) incurred using proceeds of other Indebtedness incurred pursuant to this **Section 9.01(h)**) equal to (i) \$80,000,000, plus (ii) the amount of any net cash proceeds received by the Borrower from the issuance of Qualified Equity Interests of the Borrower (in each case, or the Equivalent Amount in other currencies); provided that any Subsidiary that is neither an Obligor nor a Pledged Entity may only incur Indebtedness pursuant to this **Section 9.01(h)** (without double counting Indebtedness pursuant to this **Section 9.01(h)**) incurred using proceeds of other Indebtedness incurred pursuant to this **Section 9.01(h)**) in an aggregate outstanding principal amount not to exceed \$10,000,000 (or the Equivalent Amount in other currencies);

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(i) Guarantees by any Obligor of Permitted Indebtedness of any other Obligor;

(j) ordinary course of business equipment and software financing and leasing; 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 does not exceed \$10,000,000 (or the Equivalent Amount in other currencies) at any time;

(k) Indebtedness under Hedging Agreements permitted by **Section 9.05(f)**;

(l) Indebtedness assumed pursuant to any Permitted Acquisition; provided that (i) no such Indebtedness (individually) shall exceed 15% of the total purchase price paid in connection with such Permitted Acquisition, (ii) the aggregate outstanding principal amount of Indebtedness permitted pursuant to this **Section 9.01(l)** shall not exceed \$10,000,000 (or the Equivalent Amount in other currencies) at any time outstanding and (iii) no such Indebtedness was created or incurred in connection with, or in contemplation of, such Permitted Acquisition;

(m) Indebtedness in respect of working capital facilities of the Borrower or any of its Subsidiaries in an aggregate outstanding principal amount not to exceed \$15,000,000 (or the Equivalent Amount in other currencies); provided that the documentation governing such Indebtedness shall be in form and substance reasonably satisfactory to the Administrative Agent in its sole discretion; and

(n) other Indebtedness in an aggregate outstanding principal amount not to exceed \$5,000,000 (or the Equivalent Amount in other currencies).

**9.02 Liens.** Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now owned by it or such Subsidiary, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of such Obligor or any of its Subsidiaries existing on the date hereof and set forth on **Schedule 7.13(c)** and renewals and extensions thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien; provided that (i) no such Lien (including any renewal or extension thereof) shall extend to any other property or asset of such Obligor or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and renewals, extensions and replacements thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien that do not increase the outstanding principal amount thereof;

(c) Liens securing Indebtedness permitted under **Section 9.01(j)**; provided that such Liens are restricted solely to the collateral described in **Section 9.01(j)**;

(d) Liens imposed by any Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's, landlords', and mechanics' liens, liens relating to leasehold improvements 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;

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(e) pledges or deposits made in the ordinary course of business in connection with bids, contract leases, appeal bonds, workers' compensation, unemployment insurance or other similar social security legislation;

(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 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; and

(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 all applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any 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 in the ordinary course of business;

(j) Liens securing Indebtedness permitted under **Section 9.01(l)**; provided that (i) such Lien is not created in contemplation of or in connection with such Permitted Acquisition pursuant to which such Indebtedness was assumed, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations that it secured immediately prior to the consummation of such Permitted Acquisition and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(k) [reserved];

(l) Any judgment lien or lien arising from decrees or attachments not constituting an Event of Default;

(m) Liens arising from precautionary UCC financing statement filings regarding leases and consignment arrangements entered into in the ordinary course of business; and

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(n) other Liens, which secure obligations in an aggregate amount not to exceed \$2,500,000 (or the Equivalent Amount in other currencies) at any time outstanding,

provided that no Lien otherwise permitted under any of the foregoing **clauses (b)** through **(n)** shall apply to any Material Intellectual Property.

**9.03 Fundamental Changes and Acquisitions.** Such Obligor will not, and will 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 of its Disqualified Equity Interests or (iv) other than Permitted Acquisitions, 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:

(a) the merger, amalgamation or consolidation of any (i) Subsidiary with or into any Obligor or Pledged Entity; provided that with respect to any such transaction involving (x) the Borrower, the Borrower must be the surviving or successor entity of such transaction, (y) any other Obligor, such Obligor must be the surviving or successor entity of such transaction (unless such transaction involves more than one Obligor, then an Obligor must be the surviving or successor entity of such transaction) and (z) any Pledged Entity (but not a transaction involving the Borrower or another Obligor, which is subject to **clauses (x)** and **(y)** above, respectively), such Pledged Entity must be the surviving or successor entity of such transaction (unless such transaction involves more than one Pledged Entity, then a Pledged Entity must be the surviving or successor entity of such transaction) or (ii) any Subsidiary that is not an Obligor nor a Pledged Entity with or into any other Subsidiary that is not an Obligor nor a Pledged Entity;

(b) the sale, lease, transfer or other disposition by (i) any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to any Obligor, (ii) any Subsidiary that is not an Obligor of any or all of its property (upon voluntary liquidation or otherwise) to any Pledged Entity or (iii) any Subsidiary that is neither an Obligor nor a Pledged Entity of any or all of its property (upon voluntary liquidation or otherwise) to any other Subsidiary that is neither an Obligor nor a Pledged Entity ;

(c) the sale, transfer or other disposition of the Equity Interests of (i) any Subsidiary to any Obligor, (ii) any Subsidiary that is not an Obligor to any Pledged Entity or (iii) any Subsidiary that is neither an Obligor nor a Pledged Entity to any other Subsidiary that is neither an Obligor nor a Pledged Entity; and

(d) the Specified Acquisition/Licensing Transaction.

**9.04 Lines of Business.** Such Obligor will not, and will not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the date hereof by such Persons or a business reasonably related, incidental or complimentary thereto or reasonable extensions thereof.

**9.05 Investments.** Such Obligor will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

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- (a) Investments outstanding on the date hereof and identified in **Schedule 9.05** and any renewals, amendments and replacements thereof that do not increase the amount thereof of any such Investment or require that any additional Investment be made (unless otherwise permitted hereunder);
  - (b) operating deposit accounts with banks (or similar deposit-taking institutions) that, in the case maintained by Obligors, are Controlled Accounts;
  - (c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business;
  - (d) Permitted Cash Equivalent Investments that, in the case maintained by Obligors, are in Controlled Accounts;
  - (e) Investments by an Obligor (i) in another Obligor, (ii) in connection with a Permitted Acquisition, or (iii) in a Subsidiary that is not an Obligor; provided that Investments made pursuant to this clause (iii) shall not exceed an amount permitted under Section 9.01(h);
  - (f) Investments by a Subsidiary that is neither an Obligor nor a Pledged Entity in any other Subsidiary that is neither an Obligor nor a Pledged Entity;
  - (g) Hedging Agreements entered into in such Obligor's ordinary course of business for the purpose of hedging currency risks or interest rate risks (and not for speculative purposes) and (x) with respect to hedging currency risks, in an aggregate notional amount for all such Hedging Agreements not in excess of \$10,000,000 (or the Equivalent Amount in other currencies) and (y) with respect to hedging interest rate risks, in an aggregate notional amount for all such Hedging Agreements in excess of 50%, but not more than 100%, of the aggregate principal amount of Loans outstanding at such time;
  - (h) Investments consisting of prepaid expenses, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case, made in the ordinary course of business;
  - (i) employee loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws) which in the aggregate shall not exceed \$2,500,000 outstanding at any time (or the Equivalent Amount in other currencies);
  - (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) the increase in value of any Investment otherwise permitted pursuant to this **Section 9.05**;
  - (l) other Investments in an aggregate amount not to exceed \$25,000,000 (or the Equivalent Amount in other currencies) in any fiscal year; and

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(m) Investments permitted under **Section 9.03**.

**9.06 Restricted Payments.** Such Obligor will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided that the following Restricted Payments shall be permitted so long as no Event of Default has occurred and is continuing or could reasonably be expected to occur or result from such Restricted Payment:

- (a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests (or the equivalent thereof);
- (b) the Borrower's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;
- (c) dividends paid by any Subsidiary to any Obligor;
- (d) any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by officers, directors and employees or former officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of Borrower and its Subsidiaries not to exceed \$2,500,000 (or the Equivalent Amount in other currencies) in any fiscal year;
- (e) cashless exercises of options and warrants;
- (f) cash payments made by the Borrower to redeem, purchase, repurchase or retire its obligations under warrants issued by it (in the nature of cash payments in lieu of fractional shares) in accordance with the terms thereof; and
- (g) so long as no Default or Event of Default has occurred and is continuing (or could reasonably be expected to occur after giving effect to the Restricted Payment), other Restricted Payments in an aggregate amount not to exceed \$2,000,000 (or the Equivalent Amount in other currencies) in any fiscal year.

**9.07 Payments of Indebtedness.** Such Obligor will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, and (ii) scheduled payments of other Indebtedness to the extent permitted pursuant to **Section 9.01**.

**9.08 Change in Fiscal Year.** Such Obligor will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower.

**9.09 Sales of Assets, Etc.** Such Obligor will not, and will not permit any of its Subsidiaries to, sell, lease, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its assets or property (including accounts receivable and Equity Interests of Subsidiaries), or forgive, release or compromise any amount owed to such Obligor or Subsidiary, in each case, in one transaction or series of transactions (any thereof, an "*Asset Sale*"), except:

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- (a) sales, transfers and other dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business;
  - (b) sales of inventory in the ordinary course of its business on ordinary business terms;
  - (c) the forgiveness, release or compromise of any amount owed to any Obligor or Subsidiary in the ordinary course of business;
  - (d) outbound licenses permitted pursuant to **Section 9.13**;
  - (e) transfers of assets, rights or property by any Subsidiary Guarantor to any other Obligor;
  - (f) dispositions (including by way of abandonment or cancellation) of any assets, rights or property that is obsolete or worn out or no longer used or useful in the Business;
  - (g) dispositions resulting from Casualty Events;
  - (h) the unwinding of any Hedging Agreements permitted by **Section 9.05** pursuant to its terms;
  - (i) in connection with any transaction permitted under **Section 9.03 or 9.05**;
  - (j) dispositions identified in **Schedule 9.09**; and
  - (k) so long as no Event of Default has occurred and is continuing, other Asset Sales with a fair market value not in excess of \$5,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year.

**9.10 Transactions with Affiliates.** Such Obligor will not, and will 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 with, any of its Affiliates, unless such arrangement or transaction (i) is on fair and reasonable terms no less favorable to such Person than it could obtain in an arm's-length transaction with another Person that is not an Affiliate, (ii) is of the kind which would be entered into by a prudent Person in the position of the Borrower with another Person that is not an Affiliate, (iii) is between or among Obligors, (iv) is permitted under **Section 9.01, 9.03, 9.05, 9.06, 9.07 or 9.09**, (v) constitutes customary compensation and indemnification of, and other employment arrangements with, directors, officers, and employees of any Obligor in the ordinary course of business, (vi) constitutes payment of customary fees, reimbursement of expenses, and payment of indemnification to officers and directors and customary payment of insurance premiums on behalf of officers and directors by the Obligors or their Subsidiaries, in each case, in the ordinary course of business and (vii) are the transactions set forth on **Schedule 7.19**.

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**9.11 Restrictive Agreements.** Such Obligor will not, and will 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) Restrictive Agreements listed on **Schedule 7.15** or (iii) limitations associated with Permitted Liens.

**9.12 Modifications and Terminations of Material Agreements and Organic Documents.** Such Obligor will not, and will not permit any of its Subsidiaries to:

(a) waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document in any way or manner adverse to the interests of the Administrative Agent and the Lenders; or

(b) (x) 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 (y) 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, in each such case if such action or omission could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

**9.13 Outbound Licenses.** No Obligor will, nor will it permit any of its Subsidiaries to, enter into or become or remain bound by any outbound license of Intellectual Property relating to U.S. rights to the Product "Oraxol".

**9.14 Sales and Leasebacks.** Except as disclosed on **Schedule 9.14**, such Obligor will not, and will 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 Obligor or Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

**9.15 Hazardous Material.** Such Obligor will not, and will 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.

**9.16 Accounting Changes.** Such Obligor will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

**9.17 Compliance with ERISA.** No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that could, in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Obligor or any of its Subsidiaries shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

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**9.18 [Reserved].**

**9.19 Restriction of Amendments to Certain Documents.** No Obligor will, nor will it permit any of its Subsidiaries to, amend or otherwise modify, or waive any rights under, any other Contract if, in any case, such amendment, modification or waiver could reasonably be expected to be materially adverse to, a Lien on any Collateral securing the Obligations.

**9.20 Sanctions; Anti-Corruption Use of Proceeds.** The Borrower will not, directly or, to the knowledge of the Borrower, 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) for the purpose of funding 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 country- or territory-wide Sanctions, in violation of Sanctions or (B) in any other manner that would result in a violation of Sanctions by any party to this Agreement.

## SECTION 10. FINANCIAL COVENANTS

**10.01 Minimum Liquidity.** The Borrower shall at all times maintain a minimum aggregate balance of \$4,000,000 in cash in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent.

**10.02 Minimum Revenue.** As of the last day of each Fiscal Quarter set forth below, the Borrower and its Subsidiaries shall have received Revenue for the twelve (12) consecutive month period ending on the last day of such Fiscal Quarter, in an amount not less than the corresponding amount set forth opposite such Fiscal Quarter:

<b>Fiscal Quarter Ending</b>	<b>Revenue</b>
December 31, 2018	\$60,000,000
March 31, 2019	\$60,000,000
June 30, 2019	\$60,000,000
September 30, 2019	\$60,000,000
December 31, 2019	\$60,000,000
March 31, 2020	\$60,000,000
June 30, 2020	\$60,000,000
September 30, 2020	\$66,000,000

December 31, 2020	\$66,000,000
March 31, 2021	\$66,000,000
June 30, 2021	\$66,000,000
September 30, 2021	\$72,600,000
December 31, 2021	\$72,600,000
March 31, 2022	\$72,600,000
June 30, 2022	\$72,600,000
September 30, 2022	\$79,860,000
December 31, 2022	\$79,860,000
March 31, 2023	\$79,860,000
June 30, 2023	\$79,860,000

## 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 or interest on the Loan, 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 any Obligor 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.

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(d) **Certain Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Sections 8.02, 8.03** (with respect to the Borrower's existence), **8.11, 8.12, 8.16, 8.18, 8.19, 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), (b) or (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.

(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 and such breach or "event of default" or similar event shall continue unremedied, uncured or unwaived after the expiration of any grace or cure period thereunder, 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 secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness.

(h) **Insolvency, Bankruptcy, Etc.**

(i) Any Obligor or any of its Material Subsidiaries becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors.

(ii) Any Obligor or any of its Material Subsidiaries commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so).

(iii) Any Obligor or any of its Material Subsidiaries institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding.

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(iv) Any Obligor or any of its Material Subsidiaries applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property.

(v) Any Obligor or any of its Material Subsidiaries takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof.

(vi) Any petition is filed, application made or other proceeding instituted against or in respect of any Obligor or any of its Material Subsidiaries:

(A) seeking to adjudicate it as insolvent;

(B) seeking a receiving order against it;

(C) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of forty-five (45) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against such Obligor or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if such Obligor or Material Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply.

(vii) Any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in **Section 11.01(h)**.

(i) **Judgments.** One or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 (or the Equivalent Amount in other currencies) (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) shall be rendered against any Obligor or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of forty-five (45) 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.

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(j) **ERISA.** An ERISA Event shall have occurred that 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 in excess of \$5,000,000 (or the Equivalent Amount in other currencies).

(k) **Change of Control.** A Change of Control shall have occurred.

(l) **Material Adverse Change.** A Material Adverse Change shall have occurred.

(m) **Regulatory Matters, Etc.** If any of the following occurs: (i) the FDA or any other Regulatory Authority initiates enforcement action against, or issues a warning letter with respect to, any Obligor, any Product or any manufacturing facilities for any Product that causes any Obligor to discontinue or withdraw, or could reasonably be expected to cause any Obligor to discontinue or withdraw, marketing or sales of any Product, or causes a delay in the manufacture or sale of any Product, which discontinuance or delay could reasonably be expected to last for more than thirty (30) days, (ii) a recall of any Product that has generated or is expected to generate at least \$5,000,000 (or the Equivalent Amount in other currencies) in revenue for the Borrower and its Subsidiaries over any period of twelve (12) consecutive months or (iii) any Obligor enters into a settlement agreement with the FDA or any other Regulatory Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, in excess of \$5,000,000 (or the Equivalent Amount in other currencies).

(n) **[Reserved].**

(o) **Impairment of Security, Etc.** If any of the following events occurs: (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) except due to the action or inaction of the Administrative Agent, (ii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall for whatever reason cease to be in full force and effect, (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, or (iv) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling or manufacturing the Products or their commercially available successors, or any of their other material and commercially available products in the United States for more than forty-five (45) calendar days.

## **11.02 Remedies.**

(a) **Defaults Other Than Bankruptcy Defaults.** Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**), and at any time thereafter during the continuance of such event, the Administrative Agent may, by notice to the Borrower, 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.

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**(b) Bankruptcy Defaults.** In case of an Event of Default described in **Section 11.01(h)**, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, shall automatically 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.** If an Event of Default has occurred and is continuing, if any Obligor shall be in default under a Material Agreement, the Administrative Agent 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 such Obligor, as the case may be, thereunder, as may be necessary to prevent or cure any default. Without limiting the foregoing, upon any such default, each Obligor shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as may reasonably be required of such Obligor to permit the Administrative Agent to cure any default under the applicable Material Agreement or permit the Administrative Agent to take such other action required to enable the Administrative Agent to cure or remedy the matter in default and preserve the interests of the Administrative Agent. Any amounts paid by the Administrative Agent pursuant to this **Section 11.03** shall be payable in accordance with **Section 14.03(a)(ii)**, shall accrue interest at the Default Rate if not paid when due, and shall constitute “Obligations.”

**11.04 Payment of Prepayment Fee.** For the avoidance of doubt, but subject to the limitations contained in Section 3.03, the Prepayment Fee shall be due and payable at any time the Loans become due and payable prior to the Maturity Date in accordance with the terms hereof, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with Section 11.02(a), or automatically, in accordance with Section 11.02(b)), by operation of law or otherwise (including, without limitation, on account of any bankruptcy filing). In view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such acceleration, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lenders, the Prepayment Fee shall be due and payable upon such date. Each Obligor hereby waives any defense to payment, whether such defense may be based in public policy, ambiguity, or otherwise. The Obligors, the Administrative Agent and the Lenders acknowledge and agree that any Prepayment Fee due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under Section 5.02(b)(3) of the Bankruptcy Code or otherwise. Each Obligor further acknowledges and agrees, and waives any argument to the contrary, that payment of such amount does not constitute a penalty or an otherwise unenforceable or invalid obligation.

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**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 II, 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 any Obligor 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 a Obligor with, and cash and Cash Equivalents 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, notwithstanding the use of the defined term “the Administrative Agent”, the terms “agent”,

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“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.**

(a) **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).

(b) **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 Person thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document, Law or the best interests of the Administrative Agent or any of its Affiliates or Related Persons.

**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.

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## **12.05 Reliance and Liability.**

(a) the Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Persons 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.

(b) Neither the Administrative Agent nor any of its Related Persons 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 waive 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 Person (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 its Related Persons 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 Person, 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.

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**12.06 Administrative Agent Individually.** The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting 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 Persons or upon any document (including the Disclosure Documents) solely or in part because such document was transmitted by the Administrative Agent or any of its Related Persons, 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 Persons (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender's Pro Rata 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 Persons 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 Persons (to the extent not reimbursed by any Obligor), from and against such Lender's aggregate Pro Rata Share of the Liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to 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 Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent or any of its Related Persons under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative

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Agent or any of its Related Persons 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 Person, 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 30 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). If the Administrative Agent delivers any such notice, the Majority Lenders (with the consent of the Borrower except if an Event of Default has occurred and is continuing) shall have the right to appoint a successor the Administrative Agent; provided that if a successor 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 the Administrative Agent, notwithstanding whether the Majority Lenders have appointed a successor or the Borrower has consented to such successor.

(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 Persons 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 will continue 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) any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor (i) if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.12(a)** and (ii) upon (x) termination of the Commitments and (y) 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 (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made); and

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(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 (x) termination of the Commitments and (y) 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 (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made).

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 as 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 Pro Rata 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. GUARANTEE**

**13.01 The Guarantee.** The Subsidiary Guarantors hereby jointly and severally guarantee to the Administrative Agent and the Lenders, and their successors and assigns, the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans, all fees and other amounts and Obligations from time to time owing to the Administrative Agent and the Lenders by the Borrower and each other Obligor under this Agreement or under any other Loan Document, in each case strictly in accordance with the terms

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hereof and thereof (such obligations being herein collectively called the “***Guaranteed Obligations***”). The Subsidiary Guarantors hereby further jointly and severally agree that if the Borrower or any other Obligor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

**13.02 Obligations Unconditional.** The obligations of the Subsidiary Guarantors under **Section 13.01** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of the Borrower or any other Subsidiary Guarantor under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guaranteee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by all applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 13.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;
- (c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guaranteee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or
- (d) any lien or security interest granted to, or in favor of, the Secured Parties as security for any of the Guaranteed Obligations shall fail to be perfected.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against the Borrower or any other Subsidiary Guarantor under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guaranteee of, or security for, any of the Guaranteed Obligations.

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**13.03 Reinstatement.** The obligations of the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable costs and expenses (including fees of counsel) incurred by such Persons in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

**13.04 Subrogation.** The Subsidiary Guarantors hereby jointly and severally agree that, until the payment and satisfaction in full of all Guaranteed Obligations and the expiration and termination of the Commitments, they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in **Section 13.01**, whether by subrogation or otherwise, against the Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

**13.05 Remedies.** The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors, on one hand, and the Administrative Agent and the Lenders, on the other hand, the obligations of the Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 13.01**.

**13.06 Instrument for the Payment of Money.** Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 13** constitutes an instrument for the payment of money, and consents and agrees that the Administrative Agent and the Lenders, at their sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

**13.07 Continuing Guarantee.** The guarantee in this **Section 13** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

**13.08 General Limitation on Guarantee Obligations.** In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 13.01** would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, the Administrative Agent, any Lender or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

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## 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 its Guarantee Assumption Agreement, as the case may be, 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).

**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 and documented out of pocket costs and expenses (including the reasonable and documented out of pocket fees and expenses of Morrison & Foerster LLP, special counsel to the Administrative Agent, and any sales, goods and services or other similar taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) 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) post-closing costs 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 documented 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 and continuation of an Event of Default.

(b) **Indemnification.** Each Obligor, jointly and severally, hereby indemnifies the Administrative Agent, the Lenders and 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 and documented out of pocket fees and disbursements of counsel for the

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Lenders (unless an Event of Default has occurred and is continuing, limited to one legal counsel of the Lenders, taken as a whole), 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 or the preparation 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 investigation, litigation or proceeding is brought by any Obligor, any of its Subsidiaries, 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. The Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a "**Borrower Party**". No Lender shall assert any claim against any Borrower 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 shall not apply to Taxes other than Taxes relating to a non-Tax Claim or Loss governed by this **Section 14.03(b)**.

**14.04 Amendments, Etc.** Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document (except for the Warrant, which may be amended, waived or supplemented in accordance with the terms thereof) 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 Commitment, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal (it being understood that the waiver of any prepayment of Loans shall not constitute an extension of any date fixed for payment of principal), interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans;

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(ii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release all or substantially all of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or

(iii) amend this **Section 14.04** or the definition of "Majority Lenders".

#### **14.05 Successors and Assigns.**

(a) **General.** The provisions of this Agreement and the other Loan Documents shall be binding upon and 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 (except in connection with an event permitted under **Section 9.03**) 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(f)**. 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(e)** 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 one or more Eligible Transferees (or, if an Event of Default has occurred and is continuing, 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, 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 and the Obligors 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 and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 14.05**.

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(d) **Register.** The Administrative Agent, acting solely for this purpose as an 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 Borrower 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 Eligible Transferee (other than a natural person or any Obligor or any of its Affiliates or Subsidiaries) (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 will 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 5.01** or **5.03** (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)**. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such

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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.

(f) **Limitations on Rights of Participants.** A Participant shall not be entitled to receive any greater payment under **Section 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) **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, 14.14** and the obligations of the Subsidiary Guarantors under **Section 13** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) 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, Effectiveness.** 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. This Agreement shall become effective when counterparts hereof executed on behalf of the Obligors, the Administrative Agent and the Lender shall have been received by the Administrative Agent.

**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.

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**14.10 Jurisdiction, Service of Process and Venue .**

(a) **Submission to Jurisdiction.** Each party hereby irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against such other party in any way relating to this Agreement or any Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) [Reserved].

(c) **Waiver of Venue, Etc.** Each party hereto 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 party 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 WILL 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.

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**14.14 Severability.** If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any 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 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) to the Administrative Agent, any other Lender, any Affiliate of a Lender or any Eligible Transferee or other assignee permitted under **Section 14.05(b)**, (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**"), (iv) upon the request or demand of any Governmental Authority or any Regulatory Authority purporting to have 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 Law, (vi) if requested or required to do so in connection with any litigation or similar proceeding, (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 hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating the Borrower or 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; provided that, in the case of disclosure pursuant to **clause (iv), (v) and (vi)** above, the Administrative Agent or applicable Lender, as applicable, shall promptly provide notice to the Borrower to the extent reasonable and not prohibited by Law or any applicable Governmental Authority.

**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,

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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 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.

**14.19 USA PATRIOT Act.** The Administrative Agent and the Lenders hereby notify the Obligors 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 Obligors, which information includes the name and address of each Obligor and other information that will allow such Person to identify such Obligor in accordance with the Patriot Act.

**14.20 Acknowledgement and Consent to Bail-In of EEA 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 EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

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(a) the application of any Write-Down and Conversion Powers by an EEA 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 EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[Signature Pages Follow]

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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:

**ATHENEX, INC.**

By \_\_\_\_\_  
Name:  
Title:

Address for Notices:

[ ]  
[ ]  
Attn: [ ]  
Tel.: [ ]  
Fax: [ ]  
Email: [ ]

SUBSIDIARY GUARANTORS:

**[INSERT NAME OF GUARANTOR]**

By \_\_\_\_\_  
Name:  
Title:

Address for Notices:

[ ]  
[ ]  
Attn: [ ]  
Tel.: [ ]  
Fax: [ ]  
Email: [ ]

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ADMINISTRATIVE AGENT:

**PERCEPTIVE CREDIT HOLDINGS II, 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 II, LP  
c/o Perceptive Advisors LLC  
51 Astor Place, 10th Floor  
New York, NY 10003  
Attn: Sandeep Dixit  
Email: Sandeep@perceptivelife.com

LENDERS:

**PERCEPTIVE CREDIT HOLDINGS II, 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 II, LP c/o Perceptive Advisors LLC  
51 Astor Place, 10th Floor  
New York, NY 10003  
Attn: Sandeep Dixit  
Email: Sandeep@perceptivelife.com

**LICENSE AGREEMENT**

by and between

**XIANGXUE LIFE SCIENCES LTD.**

and

**AXIS THERAPEUTICS LIMITED**

June 29, 2018

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THIS LICENSE AGREEMENT (this “**Agreement**”) is made as of June 29, 2018 (the “**Effective Date**”), by and between Xiangxue Life Sciences Ltd., a company organized and existing under the laws of the People’s Republic of China and having its principal office at 2 Jinfengyuan Road, Guangzhou, China (“**Licensor**” or “**XLifeSc**”) and Axis Therapeutics Limited, a company organized and existing under the laws of Hong Kong and having its principal office at Unit 608-613 IC Development Centre, No 6 Science Park West Avenue, Science Park, Hong Kong (“**Licensee**” and together with Licensor, the “**Parties**” and each individually, a “**Party**”) and, solely for the purposes of SECTION 4.1, Athenex, Inc. (“**Athenex**”).

**B A C K G R O U N D:**

WHEREAS, Athenex and XLifeSc intend to enter into a Shareholders Agreement (the “**Shareholders Agreement**”), pursuant to which Athenex and XLifeSc will establish, operate and manage the Licensee to offer certain goods and services in the Territory;

WHEREAS, Licensor has developed a proprietary TCR-engineered T Cell Therapy; and Licensor desires to license such technology to Licensee in connection with creating therapeutic products for oncology indications in the Territory;

WHEREAS, each Party is willing to enter into this Agreement and grant the licenses contemplated hereby on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

SECTION 1.1. **Meanings.** Unless specifically set forth to the contrary herein, the following terms, whether used in the singular or plural, shall have the respective meanings set forth below:

(a) “**Act**” means the United States Food, Drug, and Cosmetic Act of 1938, as amended, and the rules and regulations promulgated thereunder, or any successor act, as the same shall be in effect from time to time.

(b) “**Affiliate**” means with respect to a Party (i) any corporation or business entity of which more than fifty percent (50%) of the securities or other ownership interests representing the equity, the voting stock or general partnership interest are owned, controlled or held, directly or indirectly, by a Party; (ii) any corporation or business entity which, directly or indirectly, owns, controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of a Party; (iii) any corporation or business entity of which, directly or indirectly, an entity described in the immediately preceding subsection (ii) controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of such corporation or entity; or (iv) any corporation or

business entity of which a Party has the right to acquire, directly or indirectly, more than fifty percent (50%) of the securities or other ownership interests representing the equity, voting stock or general partnership interest thereof; *provided, however* that Licensee shall not be deemed an affiliate of Licensor for the purposes of this Agreement.

(c) "**Business Day**" means any calendar day, except that if an activity to be performed or an event to occur falls on a Saturday, Sunday or a day which is recognized as a national holiday in the place of performance of an applicable activity or occurrence of an applicable event, then the activity may be performed or the event may occur on the next day that is not a Saturday, Sunday or nationally recognized holiday.

(d) "**Calendar Quarter**" means for each Calendar Year, each of the three (3) month periods ending on March 31, June 30, September 30 and December 31; *provided, however*, that (i) the first Calendar Quarter of any period specified under this Agreement shall extend from the commencement of such period to the end of the first complete Calendar Quarter thereafter; and (ii) the last Calendar Quarter shall end upon the expiration or termination of this Agreement.

(e) "**Calendar Year**" means, for the first Calendar Year of the Term, the period commencing on the Effective Date and ending on December 31, 2018, and for each successive year thereafter, the period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

(f) "**CFR**" means the United States Code of Federal Regulations.

(g) "**Claims**" has the meaning set forth in SECTION 9.2.

(h) "**Clinical Trials**" means any clinical studies of a Licensed Product conducted on humans.

(i) "**Commercialize**" or "**Commercialization**" means labeling, packaging, promotion, marketing, supply, manufacture, having manufacture, import, export, sale, offer for sale, use, distribution and register of Licensed Products, including any educational or prelaunch activities.

(j) "**Commercially Reasonable Efforts**" means exerting such efforts and employing such resources as would normally be exerted or employed by a Party for its other drug candidates and pharmaceutical products of a comparable stage of development and commercial potential.

(k) "**Completion**" means, with respect to any Clinical Trial, the completion of treatment for the necessary number of patients required by the applicable protocol and completion of the statistical analysis of the study data.

(l) "**Control**" means possession of the ability to grant the rights and licenses as provided for herein without violating the terms of any agreement or arrangement with any Third Party.

(m) "**Data**" means any and all research data, pharmacology data, preclinical data, clinical data, chemistry, manufacturing and control ("CMC") data, technical information and/or all other similar information and documentation.

(n) "**Develop**" or "**Development**" means those activities undertaken with respect to the Technology or Licensed Products which are devoted to the progression of a potential pharmaceutical or biological product in Clinical Trials and any other activities directed toward quality issues, publication, Regulatory Approval, formulation, manufacture, production or CMC of the Technology or Licensed Products, including any other pre-launch activities.

(o) “**Disputed Claim**” has the meaning set forth in SECTION 9.4. (b).

(p) “**Dollar**” or “\$” means the lawful currency of the United States.

(q) “**Effective Date**” has the meaning given in the preamble.

(r) “**First Commercial Sale**” means, with respect to any Licensed Product, the first sale to a Third Party for end use or consumption of such Licensed Product in a country after receipt of Regulatory Approval in such country or, where Regulatory Approval is not required, then the first sale for end use or consumption of a Licensed Product to a Third Party in that country in connection with the nationwide introduction of such Licensed Product in that country.

(s) “**IFRS**” means International Financial Reporting Standards as adopted by the International Accounting Standard Board, consistently applied.

(t) “**Improvements**” means all inventions, modifications, improvements and Know-How, patentable or otherwise, made, created, developed, conceived or reduced to practice by or on behalf of a Party and/or any of its Affiliates during the Term, including without limitation developments in the manufacture, formulation, ingredients, preparation, presentation, means of delivery or administration, dosage, indication, methods of use or packaging and/or sale of the Technology or Licensed Product.

(u) “**Intellectual Property**” means Patent Rights, Know-How, copyrights and works of authorship, Proprietary Information and all other intellectual property rights (except for trademarks, trade names and other source indicators), including any Improvements thereto.

(v) “**Investigational Drug Application**” means an investigational new drug application described in 21 CFR §312.23, obtained for purposes of conducting Clinical Trials in accordance with the requirements of the Act and the regulations promulgated thereunder, or the similar or equivalent application or approval under applicable Laws in another country, including all supplements and amendments thereto relating to the use of the Technology or Licensed Product.

(w) “**Licensee Indemnified Parties**” has the meaning set forth in Section 10.1.

(x) “**Licensed Product**” means any pharmaceutical or biological preparation in final form (or, where the context so indicates, the form under development) that contains or relates to the Technology.

(y) “**Licensee Patent Rights**” means all Patent Rights that are owned or Controlled by Licensee as of the Effective Date and during the Agreement Term and that are necessary or useful for the Development or Commercialization of the Technology or Licensed Products, and Improvements thereto.

(z) “**Licensor Intellectual Property**” means the Licensor Patent Rights, Licensor Know-How and other Intellectual Property that as of the Effective Date is owned or Controlled by Licensor or any of its Affiliates or in the process of development by Licensor or any of its Affiliates, including all TCR-engineered T Cell Therapy and related Technologies as detailed in the due diligence materials shared by Licensor or its Affiliates to Athenex prior to the Effective Date.

(aa) "**Licensor Know-How**" means all Know-How that is owned or Controlled by Licensor or any of its Affiliates or is in the process of development by Licensor or any of its Affiliates, and Improvements thereto.

(bb) "**Licensor Patent Rights**" means all Patent Rights that are owned or Controlled by Licensor or any of its Affiliates that are necessary or useful for the Development or Commercialization of the Technology or Licensed Products, and all Improvements owned or Controlled by Licensor or any of its Affiliates that constitute Patent Rights.

(cc) "**Know-How**" means all proprietary information and technology, including trade secret information, developments, discoveries, methods, techniques, formulations, Data, and other information, whether or not patentable, and any Improvements thereto.

(dd) "**Law**" means all laws, statutes, rules, regulations, treaties, ordinances and other pronouncements of any governmental authority having the binding effect of law.

(ee) "**Losses**" means any and all damages, awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties (including penalties imposed by any governmental authority), costs, fees, liabilities, obligations, losses, lost profits and expenses (including court costs, interest and reasonable fees of attorneys, accountants and other experts) awarded or otherwise paid or payable to Third Parties.

(ff) "**Major Jurisdictions**" means the United States, the European Union and Japan.

(gg) "**New Drug Application**" means a new drug application or biologics license application filed in accordance with 21 CFR § 315.50 21 or CFR § 601.2 (as applicable) in the United States, or any similar application filed in any of the countries in the Territory under applicable Laws in such country for the approval for the marketing of a pharmaceutical or biological product, together with all subsequent submissions.

(hh) "**Patent Rights**" means any patents, patent applications, certificates of invention, or applications for certificates of invention and any supplemental protection certificates, together with any extensions, registrations, confirmations, reissues, substitutions, divisions, continuations or continuations-in-part, reexaminations or renewals thereof, including methods of development, manufacture, formulation, preparation, presentation, means of delivery or administration, dosage, packaging, sale or use thereof.

(ii) "**Phase I Clinical Trial(s)**" means a Clinical Trial that is intended to initially evaluate the safety or pharmacological effect of a Licensed Product in subjects or that would satisfy the requirements of 21 CFR § 312.2(a), or its equivalent.

(jj) "**Phase II Clinical Trial(s)**" means a Clinical Trial that is intended to initially evaluate the effectiveness of a Licensed Product in subjects or that would satisfy the requirements of 21 CFR § 312.21(b), or its equivalent.

(kk) "**Phase III Clinical Trial(s)**" means a pivotal Clinical Trial, the results of which could be used to establish safety and efficacy of a Licensed Product as a basis for Regulatory Approval or that would satisfy the requirements of 21 CFR § 312.21(c), or its equivalent.

(ll) "**Prime Rate**" means the rate announced from time to time by HSBC Bank, N.A. as its "prime rate" in New York, New York USA which is the base rate upon which other rates charged at such bank are based, and is the best rate available to premium customers at such bank.

(mm) "**Proprietary Information**" means any and all scientific, clinical, technological, technical, regulatory, marketing, financial, commercial information, and any other non-public information whether communicated in writing, orally or by any other means, including Know-How and Data.

(nn) "**Regulatory Approval**" means approval by the relevant Regulatory Authority of a New Drug Application or other similar application, health registration, common technical document, regulatory submission, notice of compliance and any other license or permit required to be approved for the supply, manufacture, use, storage, distribution, import, export, transport, promotion, marketing and sale of a Licensed Product in a country, region or other regulatory jurisdiction.

(oo) "**Regulatory Authority**" means any governmental authority in a country, region or other regulatory jurisdiction that regulates the supply, manufacture, use, storage, distribution, import, export, transport, promotion, marketing and sale of a Licensed Product.

(pp) "**SEC**" means the United States Securities and Exchange Commission and any successor agency having substantially the same functions.

(qq) "**Technology**" means the TCR-engineered T Cell Therapy, and any pharmaceutically acceptable salts, hydrates, solvates, and prodrugs of the foregoing, or mixtures thereof, as well as all related technologies.

(rr) "**Territory**" means worldwide, except in the People's Republic of China. For clarity, the "People's Republic of China" does not include any Special Administrative Regions thereof.

(ss) "**Third Party**" means a person or entity who or which is neither a Party nor an Affiliate of a Party.

(tt) "**Valid Claim**" means any claim in an active patent application or issued in an unexpired patent which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction following exhaustion of all possible appeal processes, and which has not been admitted to be invalid or unenforceable through reissue, reexamination or disclaimer and has not been terminated for failure to pay maintenance fees.

## ARTICLE II GRANT OF RIGHTS

SECTION 2.1. License Grant by Lessor. Subject to the terms of this Agreement, Lessor, on behalf of itself and its Affiliates, hereby grants to Licensee an exclusive (even as to Lessor and its Affiliates), sublicensable right and license throughout the Territory in and to the Lessor Intellectual Property, to Develop and Commercialize Licensed Products and the Technology. Licensee may use Affiliates or Third Parties located outside the Territory to assist in the Development of Licensed Products with the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed. With respect to sales to Third Party distributors or other parties purchasing Licensed Product for resale, Licensee shall use Commercially Reasonable Efforts to restrict such resales to within the Territory.

**SECTION 2.2. Retained Rights; No Implied Licenses.** All rights not specifically granted to a Party under this Agreement are reserved and retained by Lessor or Licensee, as applicable. Nothing in this Agreement shall be deemed to constitute the grant of any implied license or other right to any Party, to or in respect of any Intellectual Property of the other Party, except as explicitly set forth in this Agreement.

**SECTION 2.3. Preservation of Intellectual Property Rights.** Lessor shall not assign, transfer, encumber, or grant any right in or to the Lessor Intellectual Property inconsistent with the rights granted to Licensee under this Agreement.

**ARTICLE III**  
**DATA TRANSFER; DEVELOPMENT AND COMMERCIALIZATION; REGULATORY MATTERS**

**SECTION 3.1. Delivery; Assistance.**

(a) As soon as practicable, but in no event later than 45 days after the Effective Date, Lessor shall deliver to Licensee copies, in a mutually agreed form or media, of all Proprietary Information and materials in the possession or control of Lessor as of such date and that relate to the Technology. Lessor shall, at the request of Licensee, deliver to Licensee physical embodiments of the Lessor Intellectual Property, including any applicable biological materials or samples.

(b) During the Term, Lessor shall provide Licensee with such assistance as Licensee may reasonably request (at Licensee's cost and expense), including making available at their place of employment (or such other location as the Parties may mutually agree upon) such persons that were involved with the creation, development or reduction to practice of the Lessor Intellectual Property or the Technology, so that such persons may assist Licensee in its efforts to evaluate, Develop and Commercialize the Technology and/or the Licensed Products.

(c) During the Term, Lessor shall, upon the request of Licensee, provide Licensee with any Data that is available to Lessor and is required for an Investigational Drug Application or New Drug Application within 60 calendar days of such request. If Lessor fails to comply with the foregoing, Licensee may terminate this Agreement immediately by and upon giving written notice to Lessor and, in such event, Lessor shall repay all payments that have been made by Licensee to Lessor prior to such date.

**SECTION 3.2. Development and Commercialization.** Licensee shall use Commercially Reasonable Efforts during the Term to Develop and Commercialize the Technology and the Licensed Products in the Major Jurisdictions. Licensee shall be responsible for all costs associated with Development and Commercialization of the Technology and the Licensed Products in the Territory.

**SECTION 3.3. Clinical Trials.** Licensee shall be responsible for conducting and administering, at its sole cost and expense, all Clinical Trials required for any Regulatory Approvals in the Territory.

**SECTION 3.4. Referencing Data.** The Data and results of any Clinical Trials conducted by a Party or its Affiliates, sublicensees or other partners shall be made available to the other Party upon request at no cost to the requesting Party, and each Party hereby grants to the other Party the non-exclusive, royalty-free license to use such Data solely for the Development and Commercialization of the Technology and Licensed Products, and subject to the confidentiality obligations set forth herein.

SECTION 3.5. Records. Licensee and Lessor shall each create records that (i) reflect all work done, results achieved and Know-How developed that are necessary or useful for the Development or Commercialization of the Technology or Licensed Products and (ii) as may be required by applicable Laws. The foregoing records shall be complete and accurate in all material respects and maintained in sufficient detail and in a good scientific manner appropriate for patent and regulatory purposes and in accordance with good industry practice.

SECTION 3.6. Promotional Materials and Activities. Licensee shall create and develop the advertising and promotional materials for the Licensed Products in the Territory. As holder of the Regulatory Approvals in the Territory, Licensee shall be responsible, as applicable, for all submissions and interactions with the Regulatory Authorities in the Territory regarding approval of all Licensed Product-related promotional materials.

SECTION 3.7. Sales of Licensed Products. Licensee shall be responsible for all sales of Licensed Products in the Territory. Licensee shall, in its sole discretion, set all terms regarding Licensed Product sales, including terms respecting credit, pricing, cash discounts, rebates, chargebacks, bad debt write-offs, and other fees and charges, and returns and allowances.

SECTION 3.8. Compliance with Laws. Each Party shall comply with all applicable Laws concerning the Development and Commercialization of the Licensed Products, and shall obligate any sublicensees that it or its Affiliates may engage with respect to Licensed Products to do the same.

SECTION 3.9. Regulatory Matters. From and after the Effective Date, Licensee shall:

(a) Have sole authority and responsibility for the timely preparation, filing and prosecution of all filings, submissions, authorizations or approvals with Regulatory Authorities in the Territory, and shall own and control all such filings, submissions, authorizations and approvals, including any Investigational Drug Application or New Drug Application in the Territory. Licensee shall provide copies of all such filings, submissions, authorizations and approvals to Lessor upon Lessor's reasonable request, at Lessor's sole cost and expense.

(b) Be the primary contact with each Regulatory Authority in the Territory and be solely responsible for all communications with each Regulatory Authority that relate to any Investigational Drug Application or New Drug Application in the Territory, *provided, however,* that upon the reasonable request of Licensee, Lessor shall provide appropriate personnel to participate in discussions with any Regulatory Authority in the Territory and/or to assist and consult with Licensee in its applications for Regulatory Approval, at Licensee's cost and expense.

(c) From and after receipt of each Regulatory Approval, have exclusive authority and responsibility to submit all reports, amendments and/or other requirements of applicable Law necessary to maintain such Regulatory Approvals and to seek revisions of the conditions of each such Regulatory Approval in the Territory as appropriate. Licensee shall have sole authority and responsibility to seek and/or obtain any required approvals of any labeling, prescribing information, package inserts, monographs and/or packaging used in connection with a Licensed Product.

(d) Have the authority in the Territory concerning (i) the protocols for Clinical Trials of Licensed Products, (ii) indications sought for any Licensed Products, (iii) approval of all contracts relating to the Development of Licensed Products, (iv) the formulation used in respect of a Licensed Product, and (v) contracts relating to the Commercialization of Licensed Product.

SECTION 3.10. Regulatory Cooperation. The Parties shall use Commercially Reasonable Efforts to coordinate and cooperate in connection with their respective compliance with all applicable Laws relating to the Development and Commercialization of the Technology and the Licensed Products, including without limitation providing the other Party with any Data or information required by applicable Regulatory Authorities.

SECTION 3.11. Pharmacovigilence. During the Term, each Party shall promptly inform the other Party, and provide appropriate notice to any applicable Regulatory Authorities or other Third Parties in accordance with applicable Laws, after such Party becomes aware of any serious adverse event (as defined by the ICH Harmonized Tripartite Guideline on Clinical Safety Data Management) that is directly or indirectly attributable to the use or application of any Technology or Licensed Product.

SECTION 3.12. Product Recalls. If any Regulatory Authority having jurisdiction requires or reasonably requests to recall a Licensed Product, (i) Licensee shall promptly notify Lessor if such recall is in the Territory and (ii) Lessor shall promptly notify Licensee if such recall is in the People's Republic of China. Licensee shall have the sole right and responsibility, at its expense, to initiate all recall procedures required or requested by any such Regulatory Agency in the Territory, and Lessor shall have the sole right and responsibility, at its expense, to initiate all recall procedures required or requested by any such Regulatory Authority in the People's Republic of China. Each Party shall be responsible, at its sole expense, for carrying out any such recall as expeditiously as possible and in such a way as to cause the least disruption to the sales of the Licensed Products and to preserve the goodwill and reputation attached to the Licensed Product and to the names of Lessor, Licensee and each of their respective Affiliates. Each Party shall maintain the appropriate procedures and records to permit the recall of the Licensed Product in accordance with applicable Laws.

#### ARTICLE IV PAYMENTS AND STATEMENTS

SECTION 4.1. Upfront Equity Payment. As partial consideration for the license and rights granted herein, within 45 Business Days of the Effective Date, and provided Lessor has completed its delivery obligations under Section 3.1(a) herein to Athenex's complete satisfaction, Athenex shall irrevocably transfer and convey to Lessor the number of shares currently issued and outstanding voting common stock of Athenex that have a value of \$5 million as of the Effective Date. The stock price will be the lower of (i) the closing price of such stock on the Effective Date or (ii) the volume weighted average price of such stock for the ten (10) trading days immediately prior to the Effective Date. Athenex and Lessor shall execute all other documents necessary to effect the intent of this provision.

SECTION 4.2. Milestone Payments. In consideration of the rights granted by Lessor hereunder, Licensee shall pay Lessor the following milestone payments within 30 Business Days of the occurrence of the specified milestone event below, with each milestone fee to be paid no more than once with respect to the achievement of such milestone event. For clarity, the milestone events relating to Clinical Trials and Regulatory Approvals in the People's Republic of China will be met when Lessor achieves such milestone events and such payments shall be made by Licensee within 30 Business Days after receiving written attestation from Lessor that such milestone event has occurred.

<u>Milestone Event</u>	<u>Payment</u>
Initiation of Phase II Clinical Trial in the United States	\$ *** million
Initiation of Phase III Clinical Trial in the United States	\$ *** million
Regulatory Approval in the United States	\$ *** million
Initiation of Phase II Clinical Trial in the European Union	\$ *** million
Initiation of Phase III Clinical Trial in the European Union	\$ *** million
Regulatory Approval in the European Union	\$ *** million
Submission of IND in the People's Republic of China	\$ *** million
Initiation of Phase II Clinical Trial in the People's Republic of China	\$ *** million
Initiation of Phase III Clinical Trial in the People's Republic of China	\$ *** million
Regulatory Approval in the People's Republic of China	\$ *** million
Initiation of Phase II Clinical Trial in Japan	\$ *** million
Initiation of Phase III Clinical Trial in Japan	\$ *** million
Regulatory Approval in Japan	\$ *** million
Total potential milestone payments:	\$ 110 million

SECTION 4.3. Royalties. During the Term, Licensor shall, pursuant to SECTION 4.5(a), pay to Licensee a royalty of \*\*\*% on annual (Calendar Year) aggregate Income generated by sales of Licensed Products by Licensor (or any of its sublicensees) in the People's Republic of China, until the last to expire Valid Claim in the People's Republic of China. If any Licensed Products are covered by more than one Valid Claim, multiple royalties will not be due for such Licensed Product. For the purposes of this Section, “**Income**” means net income as determined by accepted accounting standards.

SECTION 4.4. Set-off. In addition to (and without limiting) Licensor’s obligations in ARTICLE IX, Licensee may set-off any milestone payments due to Licensor to the full extent Licensee pays defense costs, redesign or replacement costs or royalties, damages, settlements or other payments to any Third Party related to claims or allegations that the Licensor Intellectual Property Rights infringe the Intellectual Property of such third party.

**SECTION 4.5. Royalty Reports and Payments.**

(a) **Royalty Payments.** Within 60 days following the end of each Calendar Quarter that royalties are payable by Licensor to Licensee, Licensor shall submit to Licensee a written report containing, with respect to such Calendar Quarter and for the then-current Calendar Year through the end of such Calendar Quarter, an accounting on a country-by-country basis of gross sales, Income, and the royalties payable in accordance with SECTION 4.3(a) for such Calendar Quarter, with a breakdown of all deductions taken in any such calculations, in accordance with the definition of "Income." Any conversion to United States Dollars shall be calculated in accordance with SECTION 4.6(c). Royalties shown to have accrued by each report shall be due and payable on the date such report is due.

(b) Each Party shall keep and shall require its Affiliates or sublicensees to keep complete and accurate records in sufficient detail to permit accurate determination of all amounts necessary for calculation and verification of all payment obligations set forth in this SECTION 4.5 for a period of 36 months from the end of the relevant Calendar Quarter.

**SECTION 4.6. General Payment Provisions.**

(a) All payments due and payable under this Agreement shall be made in United States Dollars by bank wire transfer in immediately available funds to an account designated by the Party receiving such payment.

(b) A Party may deduct the amount of any taxes imposed on such Party that are required to be withheld or collected by such Party, its Affiliates or sublicensees under applicable Law on amounts owing from the paying Party to the receiving Party hereunder. Any such taxes required to be withheld or collected shall be an expense of the receiving Party. The receiving Party shall provide the paying Party any tax forms that may be reasonably necessary in order for the paying Party to not withhold tax or to withhold tax at a reduced rate and the paying Party shall apply the reduced rate of withholding, or dispense with withholding, as the case may be, pursuant to such provided documentation. Each Party shall provide the other with reasonable assistance to enable the recovery, as permitted by applicable Laws, of withholding taxes, value added taxes, and similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the Party bearing such tax. To the extent a Party, its Affiliates or sublicensees pay such withholding taxes to the appropriate governmental authority on behalf of the other Party, the paying Party shall promptly deliver to the receiving Party proof of payment of such taxes.

(c) For purposes of computing royalties on Income, the Income shall be converted to United States Dollars using the year-to-date average rate of exchange for United States Dollars used by Licensor for its internal financial accounting purposes; *provided, however,* that if for any reason conversion into United States Dollars cannot be made, then notwithstanding the provisions of SECTION 4.6(a), payment may be made in the currency of the People's Republic of China by deposit in the name of Licensee in a bank account designated by Licensee in such country.

(d) Except as otherwise defined herein, all financial calculations by either Party under this Agreement shall be calculated in accordance with IFRS. In addition, all calculations shall give pro rata effect to and shall proportionally adjust (by giving effect to the number of applicable days in such Calendar Quarter) (i) for any Calendar Quarter that is shorter than a standard Calendar Quarter or any Calendar Year that is shorter than four consecutive full Calendar Quarters, or (ii) as a result of a determination, in accordance with the terms of this Agreement, that the first or last day of such Calendar Quarter (including as a result of termination of this Agreement) shall be deemed other than the actual first or last day of such Calendar Quarter, or that the first or last day of such Calendar Year shall be deemed other than the actual first or last day of such Calendar Year.

**SECTION 4.7. Audits.**

(a) Upon the written request of Licensee, Lessor shall permit an independent certified public accounting firm of recognized standing, selected by Licensee and reasonably acceptable to Lessor (provided that such accounting firm shall not be retained or compensated on a contingency basis and shall have entered into a confidentiality agreement with Lessor in form and substance reasonably satisfactory to Lessor), to have access not more than once in any Calendar Year, during normal business hours, to such of the records of Lessor as may be reasonably necessary to verify the accuracy of the reports under SECTION 4.5(a) for any Calendar Year ending not more than 24 months prior to the date of such request. The accounting firm shall disclose to Lessor whether the reports are correct or incorrect, the specific details concerning any discrepancies (including the accuracy of the calculation of Income and the resulting effect of such calculations on the amounts payable by Lessor under this Agreement) and such other information that should properly be contained in a report required under this Agreement (the "**Audit Report**").

(b) If such accounting firm concludes that additional amounts were owed during such year, and Lessor agrees with such conclusion, then Lessor shall pay the additional payments, together with interest at the Prime Rate on the amount of such additional payments, within 30 days of the date Licensee delivers the Audit Report to Lessor. If such accounting firm concludes that amounts were overpaid by Lessor during such period, Licensee shall repay Lessor the amount of such overpayment, together with interest at the Prime Rate on the amount of such overpayment, within 30 days of the date Licensee delivers the Audit Report to Lessor. The fees charged by such accounting firm shall be paid by Licensee; *provided, however,* that if an error in favor of Licensee of more than 5% of the payments due hereunder for the period being reviewed is discovered, then the reasonable fees and expenses of the accounting firm shall be paid by Lessor.

(c) Upon the expiration of 24 months following the end of any year for which Lessor has made payment in full of amounts payable with respect to such year, and in the absence of negligence or willful misconduct of Lessor or a contrary finding by an accounting firm pursuant to this SECTION 4.7, such calculation shall be binding and conclusive upon Licensee, and Lessor shall be released from any liability or accountability with respect to royalties or other payments for such year.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES**

**SECTION 5.1. General Representations.** Each Party hereby represents and warrants to the other Party as follows:

(a) Such Party is a company duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation, is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification and failure to have such qualification would prevent it from performing its obligations under this Agreement.

(b) The execution, delivery and performance by such Party has been duly authorized by all necessary corporate action and does not and will not (i) violate any provision of any Laws presently in effect having applicability to a Party or any provision of its charter or bylaws; or (ii) conflict with or constitute a default under any other agreement to which such Party is a party.

(c) This Agreement has been duly executed and is a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms and conditions hereof, except as enforceability may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditor's rights generally, or (ii) general principles of equity, whether considered in a proceeding in equity or at law.

(d) Such Party has obtained all authorizations, consents and approvals, governmental or otherwise, necessary for the execution and delivery of this Agreement, and to otherwise perform such Party's obligations under this Agreement.

(e) Neither Party, nor any of its Affiliates, are a party to, or are otherwise bound by, any oral or written contract that will result in any Third Party obtaining any interest in, or that would give to any Third Party any right to assert any claim in or with respect to, any of such Party's or the other Party's rights under this Agreement.

**SECTION 5.2. Additional Representations and Warranties of Licensor.** Licensor represents and warrants to Licensee that:

(a) As of the Effective Date, to the knowledge of Licensor, (i) there is no Third Party infringing, misappropriating or violating of any of the Licensor Intellectual Property; and (ii) the Licensor Intellectual Property is valid and enforceable where filed; (iii) the Licensor Patent Rights where filed are not subject to any pending or threatened re-examination, re-issue, opposition, interference, challenge, litigation proceeding or other claim, (iv) Licensor has timely filed and prosecuted the patents and patent applications with respect to the Licensor Intellectual Property in the Territory and (v) the use of the Licensor Intellectual Property as authorized by this Agreement will not infringe, misappropriate or violate the Intellectual Property rights of any Third Party.

(b) Licensor has not committed any act, or omitted to commit any act, that may cause the Licensor Patent Rights where filed to expire prematurely or be declared invalid or unenforceable, or that would otherwise prohibit Licensor from enforcing the Licensor Patent Rights where filed against any Third Party.

(c) As of the Effective Date in the Territory, (i) Licensor has the right to use and disclose and to enable Licensee to use and disclose (in each case under appropriate conditions of confidentiality) the Licensor Intellectual Property; and (ii) the Licensor Intellectual Property is not subject to any encumbrance, lien, license or claim of ownership by any Third Party that would conflict with the terms of this Agreement.

**ARTICLE VI**  
**PATENT MATTERS**

**SECTION 6.1. Ownership of Inventions.** As between the Parties:

(a) Licensor shall have and retain all right, title and interest in or Control over, as applicable, all Intellectual Property (and Patent Rights arising thereunder) (i) owned or Controlled by it on the Effective Date, subject to the licenses and other rights in the Territory granted to Licensee under this Agreement and (ii) that is discovered, made, first conceived, reduced to practice or generated as a result of Development or otherwise during the Term solely by or on behalf of Licensor (and, for the avoidance of doubt, such Intellectual Property and Know-How, including Patent Rights, shall be Improvements hereunder and will be licensed to Licensee as Licensor Intellectual Property).

(b) Licensee shall have and retain all right, title and interest in or Control over all Intellectual Property (and Patent Rights arising thereunder) (i) owned or Controlled by it on the Effective Date (including the Licensee Patent Rights) and related to the Technology and (ii) that is discovered,

made, first conceived, reduced to practice or generated as a result of Development or otherwise during the Term solely by or on behalf of Licensee (the “**Licensee Intellectual Property**”) and related to the Technology, subject to the underlying rights of Licensor in the Licensor Intellectual Property. Subject to the terms of this Agreement, Licensee hereby grants to Licensor a royalty free, non-exclusive, non-transferable, non-sublicensable (except with the prior written consent of Licensee, not to be unreasonably withheld, conditioned or delayed) license under any such Licensee Intellectual Property solely for use in the People’s Republic of China. Upon Licensor’s reasonable request but at Licensee’s expense, Licensee agrees to provide Licensor with access to any tangible embodiments of the Licensee Intellectual Property that are necessary for Licensor to use and exploit the Licensee Intellectual Property in the People’s Republic of China.

(c) Licensor and Licensee shall jointly own all right, title and interest in or Control over all Intellectual Property (and Patent Rights arising thereunder) that is discovered, made, first conceived, reduced to practice or generated as a result of Development or otherwise during the Term jointly by or on behalf of Licensor and Licensee (“**Jointly Owned Intellectual Property**”). With respect to Jointly Owned Intellectual Property, both Parties shall have the right to freely use and exploit such Jointly Owned Intellectual Property, without any duty to license or account to the other.

(d) Each of Licensor and Licensee shall require all of its and its Affiliates’ employees to assign all Intellectual Property that is discovered, made, first conceived, reduced to practice or generated as a result of Development or otherwise by such employees during the Term to Licensor or Licensee, respectively. Each Party shall use Commercially Reasonable Efforts to require any Third Parties who may develop Intellectual Property on behalf of a Party pursuant to the terms of this Agreement to assign ownership to Licensor or Licensee, as applicable.

#### SECTION 6.2. Maintenance and Prosecution.

(a) Licensor shall have the right and the obligation to file, prosecute and maintain the Licensor Patent Rights in Licensor’s name, using patent counsel selected by Licensor. Licensor shall pay all patent prosecution and maintenance costs relating to the Licensor Patent Rights licensed hereunder. If for any reason Licensor elects not to pay any applicable maintenance costs in the Territory during the Term, or elects not to file an application for a Licensor Patent Right, Licensor shall notify Licensee at least 45 days prior to the date an applicable payment is due or the date any loss or forfeiture of rights may occur, and Licensee may take over the maintenance and/or prosecution of such Licensor Patent Rights; *provided, however,* that any existing Valid Claims of such Licensor Patent Rights will be deemed no longer Valid Claims for purposes of this Agreement and SECTION 4.3(a). Licensor shall promptly, but no less than each Calendar Quarter, inform Licensee of all new Licensor Patent Rights in the Territory. Licensor shall have the sole right to file, prosecute and maintain all Jointly Owned Intellectual Property in the People’s Republic of China.

(b) Licensee shall have the first right to file, prosecute and maintain the Licensee Patent Rights in Licensee’s name, using patent counsel selected by Licensee. Licensee shall pay all patent prosecution and maintenance costs relating to the Licensee Patent Rights. If for any reason Licensee elects not to pay any applicable maintenance costs in the People’s Republic of China during the Term, or elects not to file an application for a Licensee Patent Right in the People’s Republic of China during the Term, Licensee shall notify Licensee at least 45 days prior to the date an applicable payment is due or the date any loss or forfeiture of rights may occur, and Licensee may take over the maintenance and/or prosecution of such Licensee Patent Rights in the People’s Republic of China. Licensee shall promptly, but no less than each Calendar Quarter, inform Licensor of all new Licensee Patent Rights in the People’s Republic of China. Licensee shall have the sole right to file, prosecute and maintain all Jointly Owned Intellectual Property in all countries in the Territory.

(c) The responsible Party under this SECTION 6.2 shall solicit the other Party's review of the nature and text of any Patent Rights arising during the Term that are necessary or useful for the Development or Commercialization of the Technology or the Licensed Products and important prosecution matters related thereto, each in reasonably sufficient time prior to the filing thereof, and the responsible Party shall take into account the other Party's reasonable comments related thereto. Each Party shall execute all documents and take all actions as are reasonably requested by the other Party with respect to any filings and registrations referred to in this SECTION 6.2.

#### SECTION 6.3. Third Party Infringement.

(a) Each Party shall promptly give the other Party notice of any actual or suspected infringement by a Third Party of any Licensor Intellectual Property or Licensee Intellectual Property, which comes to such Party's attention.

(b) Licensee shall have the first right, either directly or through its Affiliates or licensees, to initiate and prosecute such legal action in the Territory at its own expense and in the name of Licensor and/or Licensee, or to control the defense of any declaratory judgment action in the Territory relating to the Licensor Intellectual Property or Licensee Intellectual Property, and Licensee shall provide Licensor with reasonable notice of any such action it commences in respect of the Licensor Intellectual Property and keep Licensor reasonably informed of any significant developments in such action. Licensor shall render, at Licensee's expense (including reasonable attorneys' fees), all assistance reasonably requested in connection with any action taken by Licensee to prevent such infringement. The control of such action, including whether to initiate any legal proceeding and/or the settlement thereof, shall solely be under the control of Licensee; *provided, however,* that Licensee shall not settle any such claim or proceeding in a manner that adversely affects Licensor's rights or which results in any material monetary payment by or financial loss to Licensor, without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed.

(c) If Licensee elects not to initiate and prosecute an infringement or defend a declaratory judgment action in any country in the Territory as provided in SECTION 6.3(a) within 60 days after having become aware of such potential infringement, then Licensor may elect to take such action that is reasonably necessary and appropriate to terminate or prevent such infringement, including instituting an infringement proceeding, at the sole cost of Licensor, *provided, however,* that Licensor shall not enter into any settlement or compromise of any claim relating to the Licensor Intellectual Property or Licensee Intellectual Property that would result in any material monetary payment by or financial loss to Licensee, or any loss of rights granted to Licensee under this Agreement, without Licensee's prior written consent, which consent shall not be unreasonably withheld or delayed.

(d) Licensor shall have the first right, either directly or through its Affiliates or licensees, to initiate and prosecute such legal action outside of the Territory at its own expense and in the name of Licensor, or to control the defense of any declaratory judgment action outside the Territory relating to the Licensor Intellectual Property. If Licensor elects not to initiate and prosecute an infringement or defend a declaratory judgment action in any country outside of the Territory as provided in SECTION 6.3(c) within 60 days after having become aware of such potential infringement, and such lack of action materially harms Licensee or its business, then Licensee may elect to take such action that is reasonably necessary and appropriate to terminate or prevent such infringement, including instituting an infringement proceeding, at the sole cost of Licensee, *provided, however,* that Licensee shall not enter into any settlement or compromise of any claim relating to the Licensor Intellectual Property that would result in any material monetary payment by or financial loss to Licensor without Licensor's prior written consent, which consent shall not be unreasonably withheld or delayed.

(e) For any legal action or defense contemplated by this SECTION 6.3, in the event that any Party is unable to initiate, prosecute, or defend such action solely in its own name, the other Party shall join such action voluntarily and shall execute all documents necessary for the other Party to prosecute, defend and maintain such action. In connection with any action contemplated by this SECTION 6.3, the Parties shall cooperate fully and will provide each other with any information or assistance that either reasonably may request.

(f) Any recovery or award obtained by either Party as a result of any action or settlement commenced with respect to infringement within the Territory shall be shared as follows:

(i) the Party that initiated and prosecuted, or maintained the defense of, the action shall recoup all of its costs and expenses (including reasonable attorneys' fees) incurred in connection with the action, whether the recovery is by settlement or otherwise;

(ii) the other Party then shall, to the extent funds remain after payment set forth in subsection (i) has been made, recover its reasonably documented costs and expenses (including reasonable outside attorneys' fees) incurred in connection with the action;

(iii) if Licensor initiated and prosecuted, or maintained the defense of, the action inside the People's Republic of China, the amount of any recovery remaining then shall be retained by Licensor, with such amount being included in Income for the applicable Calendar Quarter; and

(iv) if Licensor initiated and prosecuted, or maintained the defense of, the action inside the Territory, the amount of any recovery remaining then shall be retained by Licensor.

#### SECTION 6.4. Third Party Intellectual Property.

(a) In the event that a Party becomes aware of any claim that the Development or Commercialization of Licensed Products infringes the intellectual property rights of any Third Party in the Territory, such Party shall promptly notify the other Party.

(b) Licensor shall have the first right and the obligation to defend and control the defense of any action in the Territory related to the infringement of any Third Party intellectual property by the Licensed Products in the Territory. Licensor shall keep Licensee reasonably informed as to the progress of any such action. Licensee shall render, at Licensor's expense, all assistance reasonably requested in connection with any action taken by Licensor. The control of such action, including whether to initiate any legal proceeding and/or the settlement thereof, shall solely be under the control of Licensor; *provided, however,* that Licensor shall not settle any such claim or proceeding in a manner that adversely affects Licensee's rights or that results in any material monetary payment by or financial loss to Licensee, without Licensee's written consent, which consent shall not be unreasonably withheld. Licensor shall pay for all costs and expenses incurred in such defense. In addition, Licensor shall pay all damages awarded or settlement payments made (including future royalty or similar payments) to such Third Party.

SECTION 6.5. Patent Term Extensions. The Parties shall cooperate with each other in obtaining patent term extensions or restorations or supplemental protection certificates or their equivalents in any country in the Territory where applicable and where desired by Licensee. Elections with respect to obtaining such extension or supplemental protection certificates shall be made in the same manner and with the same relative priorities between the Parties as is applicable to the prosecution and maintenance of Patent Rights pursuant to SECTION 6.2.

## ARTICLE VII CONFIDENTIALITY AND PUBLICITY

SECTION 7.1. Non-Disclosure and Non-Use Obligations. During the Term and for a period of 10 years thereafter, all Proprietary Information disclosed by one Party to the other hereunder shall be maintained in confidence and shall not be disclosed to any Third Party or used for any purpose except as expressly permitted herein without the prior written consent of the Party that disclosed it. The foregoing non-disclosure and non-use obligations shall not apply to the extent that such Proprietary Information:

- (a) is known by the receiving Party at the time of its receipt, as documented by records;
- (b) is or becomes in the public domain or knowledge without breach by either Party of its confidentiality obligations;
- (c) is disclosed to a receiving Party by a Third Party who may, to the knowledge of the Receiving Party, lawfully do so and is not under an obligation of confidentiality to the disclosing Party; or
- (d) is developed by the receiving Party independently of Proprietary Information received from the disclosing Party, as documented by contemporary written records.

SECTION 7.2. Permitted Disclosure of Proprietary Information. Notwithstanding SECTION 7.1, a Party receiving Proprietary Information of another Party may disclose such Proprietary Information:

- (a) to governmental or other regulatory agencies in order to obtain patents pursuant to this Agreement, or to gain approval to conduct Clinical Trials or to market Licensed Product, but such disclosure may be only to the extent reasonably necessary to obtain such patents or authorizations and in accordance with the terms of this Agreement or as otherwise requested by the Regulatory Authorities;
- (b) by Licensee to its agents, consultants, sublicensees or Affiliates in connection with the Development or Commercialization, or to otherwise enable Licensee to fulfill its obligations and responsibilities under this Agreement, on the condition that such entities agree to be bound by confidentiality obligations consistent with this Agreement; or
- (c) if required to be disclosed by law, subpoena or court order, provided that notice is promptly delivered to the non-disclosing Party in order to provide such party a reasonable opportunity to challenge or limit the disclosure obligations, and that any such disclosure made by the disclosing party is limited to the extent required by law or court order.

SECTION 7.3. Certain Disclosures. Except as set forth in this Agreement or as required by Law, neither Party shall make any press release or other public announcement or other public disclosure to a Third Party concerning the existence of or terms of this Agreement, the subject matter of this Agreement or the activities contemplated hereunder, without the prior written consent of the other Party, which consent shall include agreement upon the nature and text of such release, announcement or

other disclosure and shall not be unreasonably withheld or delayed; *provided, however,* that the foregoing will not restrict disclosures made in connection with any filing of information or materials with a stock exchange or the SEC or any stockholders' letter to private investors on the condition that if the information is for investors, such investors agree to be bound by confidentiality obligations consistent with this Agreement. Each Party agrees to provide to the other Party a copy of any such press release or other public announcement or disclosure as soon as reasonably practicable under the circumstances prior to its scheduled release, and consider comments from such Party in good faith. Each Party shall have the right to review and recommend changes to any press release or other public announcement or disclosure; *provided, however,* that such right of review and recommendation shall only apply for the first time that specific information is to be disclosed, and shall not apply to the subsequent disclosure of substantially similar information that has previously been disclosed unless there have been material developments relating to the Technology or the Licensed Product since the date of the previous disclosure; *provided, further,* that each Party shall provide to the other Party reasonable advance notice of any such subsequent disclosure. Without limiting the generality of any of the foregoing, it is understood that the Parties or their Affiliates may make disclosure of this Agreement and the terms hereof in accordance with the rules and regulations of the SEC, other governmental authority, or securities exchange, may file this Agreement as an exhibit to any filing with the SEC, other governmental authority, or securities exchange, and may distribute any such disclosure or filing in the ordinary course of its business, provided, further, that to the maximum extent allowable by the rules and regulations of the SEC, other governmental authority, or securities exchange, and except as required by applicable Laws, Licensor and Licensee shall seek to redact any confidential information set forth in such filings, and each Party shall provide a draft of the redacted version of this Agreement to the other Party no less than 5 Business Days prior to disclosure or filing with the SEC, other governmental authority, or securities exchange, and give reasonable consideration to the other Party's comments regarding any proposed redaction.

**SECTION 7.4. Publications.** Neither Party may submit for written or oral publication any manuscript, abstract or the like relating to the Technology or Licensed Products, without the prior approval of the other Party, not to be unreasonably withheld, delayed or conditioned. If a Party desires to submit such publication, it shall first deliver to the other Party, for the other Party's review, the proposed publication or an outline of the oral disclosure at least sixty (60) days prior to planned submission or presentation and shall consider in good faith comments made by such other Party.

## ARTICLE VIII TERM AND TERMINATION

### **SECTION 8.1. Term; Termination.**

(a) This Agreement is effective as of the Effective Date and will remain in effect until the last to expire Valid Claim included in the Licensor Patent Rights ("Term").

(b) This Agreement will terminate automatically if the Shareholders Agreement is terminated pursuant to the terms therein;

(c) Either Party may, without prejudice to any other remedies available to it under this Agreement or at law or in equity, terminate this Agreement by providing written notice to the other party (as used in this subsection, the "**Breaching Party**"), in the event that the Breaching Party materially breaches any term of this Agreement and fails to cure such breach within 60 days of receiving notice of same (or, if such default cannot be cured within such 60-day period, if the Breaching Party does not

commence and diligently continue actions to cure such default during such 60-day period). Termination will become effective at the end of the 60-day cure period unless the Breaching Party cures such breach during such 60-day period, or if such breach is not susceptible to cure within such 60-day period, the Breaching Party has commenced and is diligently pursuing a cure. The right of either Licensor or Licensee to terminate this Agreement as provided in this SECTION 8.1 will not be affected in any way by such Party's waiver or failure to take action with respect to any previous breach or default.

#### SECTION 8.2. Effect of Expiration or Termination; Survival.

(a) Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination, including all accrued payment obligations arising under SECTION 4.3. In addition to any other provisions of this Agreement which by their terms continue after the expiration of this Agreement, the provisions of SECTION 3.6, SECTION 3.7, SECTION 3.8, ARTICLE VII, ARTICLE IX, and ARTICLE X shall survive the expiration or termination of this Agreement and shall continue in effect after the date of expiration or termination. In addition, Licensor hereby grants to Licensee, effective upon expiration of this Agreement, a non-exclusive, royalty-free, fully paid-up, sublicensable license to the Licensor Know-How that may be infringed by the Licensed Products.

(b) Payments of amounts owing to any Party under this Agreement as of its expiration or termination shall be due and payable either (i) to the extent such amounts can be calculated and a fixed sum determined at the time of expiration or termination of this Agreement, thirty (30) days after the date of such expiration or termination, or (ii) to the extent such amounts cannot be calculated and a fixed sum determined at the time of expiration or termination of this Agreement, thirty (30) days after the date on which such amounts can be calculated and a fixed sum determined.

(c) Licensee and its Affiliates and sublicensees shall have the right to sell or otherwise dispose of the stock of any Licensed Product subject to this Agreement on hand or in process of manufacture as of the termination of this Agreement. Within thirty (30) days after the effective date of termination of this Agreement, Licensee shall notify Licensor of the amount of Licensed Product that Licensee, its Affiliates and sublicensees then have on hand or in the process of manufacture. Licensee shall have the right to sell in the Territory (subject to Regulatory Approvals), such remaining stock of Licensed Product for a period ending upon the earlier of: (i) Licensee's, its Affiliates' and sublicensees' sale of all such remaining Licensed Product, or (ii) 6 months after such termination, and terms and conditions of this Agreement shall apply to such Licensed Product so sold. Licensor hereby grants Licensee, effective upon termination of this Agreement, a non-exclusive license under the Licensor Intellectual Property solely to sell such Licensed Product in the Territory, subject to payment of all related amounts due under this Agreement. Any remaining quantities of Licensed Product not sold during this period shall, at Licensor's election, either be destroyed by Licensee at Licensee's cost or sold to Licensor at Licensee's procurement cost for such Licensed Product.

(d) Upon the termination of this Agreement: (i) each Party shall, at the request of the other Party, return or destroy all copies of the other Party's Proprietary Information, *provided, however,* that a Party may keep one copy of such Proprietary Information if required to comply with any Applicable Laws; and (ii) if termination was for material breach of this Agreement by Licensee, the (1) Licensee shall transfer to Licensor any and all Investigational Drug Applications, Regulatory Approvals, and any other regulatory filings or submissions made or filed for Licensed Product by Licensee or its designees, and (2) Licensee shall transfer to Licensor any Data or materials relating to the Technology or the Licensed Products.

**ARTICLE IX**  
**INDEMNIFICATION; LIMITATIONS OF LIABILITY**

SECTION 9.1. **Indemnity.** For purposes of this SECTION 9.1, “**Licensor Indemnified Parties**” refers to Licensor, its Affiliates and the officers, directors, employees, shareholders, agents and successors and assigns of Licensor and its Affiliates, and “**Licensee Indemnified Parties**” refers to Licensee, its Affiliates and officers, directors, employees, shareholders, agents and successors and assigns of Licensee and its Affiliates.

SECTION 9.2. **Licensee Indemnification.** Licensee shall defend the Licensor Indemnified Parties from and against all suits, claims, actions, demands, complaints, lawsuits or other proceedings, (collectively, “**Claims**”), that are brought by a Third Party, and shall indemnify and hold harmless to the fullest extent permitted by law the Licensor Indemnified Parties from and against any and all Losses, that arise out of or are attributable to (i) Licensee’s gross negligence or willful misconduct in exercising or performing any of its rights or obligations under this Agreement; or (ii) a material breach by Licensee of any of its obligations, representations, warranties or covenants under this Agreement; *provided, however,* that Licensee shall not be obligated to indemnify Licensor under this SECTION 9.2, to the extent such Claim arose out of the gross negligence or willful misconduct of Licensor or to the extent such Claim is covered by Licensor’s indemnity below.

SECTION 9.3. **Licensor Indemnification.** Licensor shall defend the Licensee Indemnified Parties from and against all Claims, in each case that are brought by a Third Party, and shall indemnify and hold harmless to the fullest extent permitted by law the Licensee Indemnified Parties from and against any and all Losses that arise out of such Claims that are attributable to (i) the use of the Licensor Intellectual Property as authorized by this Agreement infringing, misappropriating or violating the Intellectual Property rights of such Third Party, (ii) Licensor’s gross negligence or willful misconduct in exercising or performing any of its rights or obligations under this Agreement; or (ii) a material breach by Licensor of any of its obligations, representations, warranties or covenants under this Agreement; *provided, however,* that Licensor shall not be obligated to indemnify Licensee under this SECTION 9.3, to the extent such Claim arose out of the gross negligence or willful misconduct of Licensee.

**SECTION 9.4. Indemnification Procedure.**

(a) Each Party shall promptly notify the other Party in writing of any Claim. Concurrent with the provision of notice pursuant to this SECTION 9.4(a), the indemnified Party shall provide to the other Party copies of any complaint, summons, subpoena or other court filings or correspondence related to such Claim and will give such other information with respect thereto as the other Party shall reasonably request. The indemnifying Party and indemnified Party shall meet to discuss how to respond to such Claim. Failure to provide prompt notice shall not relieve any Party of the duty to defend or indemnify unless such failure materially prejudices the defense of any matter. Each Party agrees that it will take reasonable steps to minimize the burdens of the litigation on witnesses and on the ongoing business of the indemnified Parties including by making reasonable accommodations to witnesses’ schedules when possible and seeking appropriate protective orders limiting the duration and/or location of depositions.

(b) Should either Party dispute that any Claim or portion of a Claim (“**Disputed Claim**”) of which it receives notice pursuant to SECTION 9.4(a), is an indemnified Claim, it shall so notify the other Party providing written notice in sufficient time to permit such other Party to retain counsel and timely appear, answer and/or move in any such action. In such event, such other Party shall defend against such Claim; *provided, however,* that such other Party shall not settle any Claim which it

contends is an indemnified Claim without providing the indemnifying Party 10 Business Days' notice prior to any such settlement and an opportunity to assume the defense and indemnification of such Claim pursuant to this Agreement. If it is determined that a Disputed Claim is subject to indemnification, the indemnifying Party will reimburse the costs and expenses, including reasonable attorneys' fees, of the indemnified Party.

SECTION 9.5. Settlement of Indemnified Claims. The indemnifying Party under SECTION 9.2 or SECTION 9.3, as applicable, shall have the sole authority to settle any indemnified Claim without the consent of the other Party, provided, however, that an indemnifying Party shall not, without the written consent of the other Party, as part of any settlement or compromise (i) admit to liability on the part of the other Party; (ii) agree to an injunction against the other Party; (iii) separately apportion fault to the other Party in any manner or (iv) agree to a settlement or compromise that would result in any loss of rights or material liability to the other Party. The Parties further agree that as part of the settlement of any indemnified Claim, an indemnifying Party shall obtain a full, complete and unconditional release from the claimant on behalf of the indemnified Parties.

SECTION 9.6. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY SUCH OTHER PARTY OR ITS AFFILIATES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT. THE FOREGOING SENTENCE SHALL NOT LIMIT THE OBLIGATIONS OF EITHER PARTY TO INDEMNIFY THE OTHER PARTY FROM AND AGAINST THIRD PARTY CLAIMS UNDER THIS ARTICLE.

## ARTICLE X MISCELLANEOUS

SECTION 10.1. Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of the Agreement during the period of time when such failure or delay is caused by or results from events beyond the reasonable control of a Party, including fire, flood, earthquake, explosion, storm, blockage, embargo, war, acts of war (whether war be declared or not), terrorism, insurrection, riot, civil commotion, strike, lockout or other labor disturbance, failure of public utilities or common carriers, act of God or act, omission or delay in acting by any governmental authority or the other Party. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practicable.

SECTION 10.2. Assignment. No Party may assign (including assignments by operation of law) or assume in bankruptcy this Agreement or any of its rights, interests or obligations hereunder, in whole or in part, without the prior written approval of the other Party in its sole discretion. Any purported transaction in violation of the foregoing shall be null and void ab initio and of no force or effect.

SECTION 10.3. Severability. In the event that any of the provisions contained in this Agreement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of the Parties. In such event, the Parties covenant and agree to renegotiate any such term, covenant or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the Parties that the basic purposes of this Agreement are to be effectuated.

**SECTION 10.4. Notices.**

(a) Correspondence, reports, documentation, and any other communication in writing between the Parties in the course of ordinary implementation of this Agreement (but not including any notice required by this Agreement) shall be in writing and delivered by hand, sent by email, or by overnight express mail (*e.g.*, FedEx) to any single representative designated by the Party which is to receive such written communication.

(b) Extraordinary notices and communications (including but not limited to notices of termination, force majeure, material breach, change of address, or any other notices required by this Agreement) shall be in writing, hand delivered or sent by overnight courier or express mail service (*e.g.*, FedEx), postage prepaid, or by facsimile or confirmed by prepaid registered or certified air mail letter, return receipt requested, to the following addresses of the Parties (or to such other address or addresses as may be specified from time to time in a written notice):

**if to Lessor to:**

XIANGXUE LIFE SCIENCES LTD.

2 Jinfengyuan Road, Guangzhou, China

Attention: Mr. YongHui Wang

Tel. No.: +86 20 22211033

Fax No.: +86 20 22211666

E-mail: wyhsec@xphcn.com

**if to Licensee to:**

AXIS THERAPEUTICS LIMITED

Unit 608-613 IC Development Centre, No 6 Science Park West Avenue, Science Park, Hong Kong

Attention: Johnson Y.N. Lau

Fax No.: +852 3706 5544

**if to Athenex to:**

Athenex, Inc.

Conventus Building, 1001 Main Street, Suite 600, Buffalo, New York 14203

Attention: Johnson Y.N. Lau

Fax No.: +852 3996 7454

Any such communication shall be deemed to have been given when delivered if personally delivered or sent by facsimile on a Business Day, upon confirmed delivery by nationally-recognized overnight courier if so delivered, and on the third Business Day following the date of mailing if sent by registered or certified mail.

SECTION 10.5. Equitable Relief. Each of the Parties acknowledges and agrees that the other Party may suffer irreparable and continuing damage for which there is no adequate remedy at law in the event of a breach or threatened breach of this Agreement. Accordingly, and notwithstanding anything herein to the contrary, each of the Parties agrees that the other Party shall be entitled to seek injunctive relief to prevent breaches of the provisions of this Agreement, and/or to require specific performance of obligations under this Agreement and the terms and provisions hereof, in any action instituted in any court or tribunal having jurisdiction over the Parties and the matter, without posting any bond or other security, and that such relief shall be in addition to any other remedies to which such Party may be entitled, at law or in equity.

SECTION 10.6. Further Assurances. Each of the Parties shall take such further actions as are necessary or desirable in order to effectuate the respective rights and obligations hereunder.

SECTION 10.7. Applicable Law, Venue and Dispute Resolution. This Agreement, including the validity hereof and the rights and obligations of the Parties hereunder, shall be governed by and construed and interpreted in accordance with the laws of Hong Kong, except to the extent that the matter in question is mandatorily required to be governed by the laws of any other jurisdiction, in which case it will be governed by the applicable provisions of such laws. Except as provided in Section 10.5, all disputes that arise in connection with this Agreement and the interpretation thereof shall first be discussed amicably between the Parties. If the dispute cannot be settled in an amicable manner, it will be settled by arbitration to be held in Hong Kong in conformity with commercial arbitration rules of the International Chamber of Commerce. The award rendered by arbitration shall be final and binding upon the Parties hereto, and judgment may be entered by a court of competent jurisdiction.

SECTION 10.8. Entire Agreement. This Agreement, including the exhibits and schedules hereto, contains the entire understanding of the Parties with respect to the subject matter herein. All express or implied agreements and understandings, either oral or written, heretofore made, including without limitation any offering letters, letters of intent, or term sheets, are expressly superseded by this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by all Parties hereto.

SECTION 10.9. Independent Contractors. It is expressly agreed that the Parties will be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither Party has the authority to make any statements, representations or commitments of any kind, or to take any action, that are binding on the other Party without the prior written consent of such other Party.

SECTION 10.10. Waiver. The waiver by a Party hereto of any right hereunder shall not be deemed a waiver of any other right hereunder, whether of a similar nature or otherwise.

SECTION 10.11. Construction. The headings of this Agreement are for convenience only and shall not affect its construction. This Agreement shall be construed as if drafted jointly by the Parties. The use of the word "including" in this Agreement shall mean "including without limitation." Words such as "herein," "hereof," and "hereunder" refer to this Agreement as a whole unless the context otherwise requires.

SECTION 10.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to the Agreement transmitted by fax, by email in “portable document format” (“.pdf”) or by any other electronic means intended to preserve the original graphic and pictorial appearance of the Agreement shall have the same effect as physical delivery of the paper document bearing an original signature.

SECTION 10.13. No Third Party Beneficiaries. Except as specifically set forth herein, none of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including any creditor of either Party hereto. No such Third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any claim in respect of any debt, liability or obligation (or otherwise) against either Party hereto.

SECTION 10.14. Prior Approval. The Parties acknowledge and agree that the effectiveness of this Agreement is conditioned on (i) the approval of the Board and shareholder approval of Xiangxue Pharmaceutical Co. Ltd. and of Licenser and (ii) the approval of the Securities Regulatory Committee and Shenzhen Stock Exchange, and the Parties agree to take all reasonable actions and execute all documents necessary to obtain such approvals.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**XIANGXUE LIFE SCIENCES LTD.**

By: \_\_\_\_\_

Name: YongHui Wang

Title: CEO

**AXIS THERAPEUTICS LIMITED**

By: \_\_\_\_\_

Name: Johnson Y.N. Lau

Title: CEO

Solely for the purposes of Section 4.1:

**ATHENEX, INC.**

By: \_\_\_\_\_

Name: Johnson Y.N. Lau

Title: Chairman and CEO

**LICENSE AGREEMENT**

**by and between**

**ATHENEX THERAPEUTICS LIMITED**

**and**

**AVALON POLYTOM (HK) LIMITED**

**PEGTOMARGINASE**

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**THIS LICENSE AGREEMENT** (this “**Agreement**”) is made and entered into as of June 29, 2018 (“**Effective Date**”), by and between ATHENEX THERAPEUTICS LIMITED, company existing under the laws of Hong Kong and having its principal office at Units 608-613, IC Development Centre, No. 6 Science Park West Avenue, Hong Kong Science Park, Sha Tin, New Territories, Hong Kong (“**Athenex**”) and AVALON POLYTOM (HK) LIMITED, a company existing under the laws of Hong Kong and having a registered address at 10/F, Fung House, 19-20 Connaught Road Central, Hong Kong (“**Avalon**”).

**WITNESSETH:**

**WHEREAS**, Avalon owns or Controls the Avalon Intellectual Property;

**WHEREAS**, Athenex and its Affiliates have experience in the development, marketing, promotion and sale of pharmaceutical products and Athenex desires to obtain the exclusive right and license in the Territory to further develop and thereafter commercialize Licensed Products in the Field; and

**WHEREAS**, Avalon desires to grant to Athenex such exclusive right and license in the Territory, all on the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Unless specifically set forth to the contrary herein, the following terms, whether used in the singular or plural, shall have the respective meanings set forth below:

1.1 “**Act**” means the United States Food, Drug, and Cosmetic Act of 1938, as amended, and the rules and regulations promulgated thereunder, or any successor act, as the same shall be in effect from time to time.

1.2 “**Affiliate**” means with respect to a Party: (a) any corporation or business entity of which more than fifty percent (50%) of the securities or other ownership interests representing the equity, the voting stock or general partnership interest are owned, controlled or held, directly or indirectly, by a Party; (b) any corporation or business entity which, directly or indirectly, owns, controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of a Party; (c) any corporation or business entity of which, directly or indirectly, an entity described in the immediately preceding subsection (b) controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of such corporation or entity; or (d) any corporation or business entity of which a Party has the right to acquire, directly or indirectly, more than fifty percent (50%) of the securities or other ownership interests representing the equity, voting stock or general partnership interest thereof. Avalon and Athenex are not Affiliates for purposes of this Agreement.

1.3 “**Agreement Term**” has the meaning set forth in Section 8.1.

1.4 “**Athenex Indemnified Parties**” has the meaning set forth in Section 9.1.

1.5 “**Athenex Know-How**” means all Know-How that is owned or Controlled by Athenex as of the Effective Date or that becomes owned or Controlled by Athenex during the Agreement Term.

1.6 "**Athenex Patent Rights**" means all Patent Rights that are owned or Controlled by Athenex as of the Effective Date or that become owned or Controlled by Athenex during the Agreement Term.

1.7 "**Avalon Indemnified Parties**" has the meaning set forth in Section 9.1.

1.8 "**Avalon Intellectual Property**" means the Avalon Patent Rights, Avalon Know-How and Intellectual Property with respect to Compounds owned or Controlled by Avalon or any of its Affiliates as of the Effective Date or that becomes owned or Controlled by Avalon during the Agreement Term. "**Avalon Intellectual Property**" includes Improvements. A list of the Avalon Intellectual Property as of the Effective Date is listed in Schedule 1.8.

1.9 "**Avalon Know-How**" means all Know-How that is owned or Controlled by Avalon or any of its Affiliates as of the Effective Date or that becomes owned or Controlled by Avalon during the Agreement Term. "**Avalon Know-How**" includes, without limitation, the PolyU Technology.

1.10 "**Avalon Patent Rights**" means all Patent Rights that are owned or Controlled by Avalon or any of its Affiliates or that become owned or Controlled by Avalon during the Agreement Term. "**Avalon Patent Rights**" includes, without limitation, the PolyU Patents.

1.11 "**Breaching Party**" has the meaning set forth in Section 8.2(c).

1.12 "**Business Day**" means any calendar day, except that if an activity to be performed or an event to occur falls on a, Saturday, Sunday or a day which is recognized as a national holiday in the place of performance of an applicable activity or occurrence of an applicable event, then the activity may be performed or the event may occur on the next day that is not a Saturday, Sunday or nationally recognized holiday.

1.13 "**Calendar Quarter**" means for each Calendar Year, each of the three (3) month periods ending on March 31, June 30, September 30 and December 31; *provided, however,* that (i) the first Calendar Quarter of any period specified under this Agreement shall extend from the Effective Date until the end of the first complete Calendar Quarter thereafter (even if greater than 3 months); and (ii) the last Calendar Quarter shall end upon the expiration or termination of this Agreement.

1.14 "**Calendar Year**" means, for the first Calendar Year, the period commencing on the Effective Date and ending on December 31, 2018, and for each year thereafter, each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

1.15 "**C.F.R.**" means the United States Code of Federal Regulations.

1.16 "**cGMP**" means current Good Manufacturing Practice.

1.17 "**Claims**" has the meaning set forth in Section 9.2.

1.18 "**Clinical Studies**" means any clinical studies of a Licensed Product conducted on humans.

1.19 "**Commercialize**" or "**Commercialization**" means promotion, marketing, sale, supply, manufacture, import, export and distribution of Licensed Products, including any educational or pre-launch activities.

1.20 "**Commercially Reasonable Efforts**" means exerting such efforts and employing such resources as would normally be exerted or employed by a Party for its other drug candidates and pharmaceutical products of a comparable stage of development and commercial potential.

1.21 "**Completion**" means, with respect to any Clinical Study, the completion of treatment for the necessary number of patients required by the applicable protocol and completion of the statistical analysis of the study data.

1.22 "**Compound(s)**" means Pegtomarginase (pegylated and cobalt-replaced arginase) and any pharmaceutically acceptable sub-compounds, mixtures or combinations of the same.

1.23 "**Control**" means possession of the ability to grant the rights and licenses as provided for herein without violating the terms of any agreement or arrangement with any Third Party.

1.24 "**Copyright**" means the rights granted to an author or creator of an original work fixed in any tangible medium of expression, including without limitation, books, literary works, computer programs, and pictorial, graphic, dramatic and sculptured works, as well as derivative works and translations.

1.25 "**Data**" means any and all research data, pharmacology data, preclinical data, clinical data, adverse reaction data, chemistry, manufacturing and control ("CMC") data and/or all other similar documentation generated in connection with any Compound or any Licensed Product.

1.26 "**Develop**" or "**Development**" means those activities undertaken with respect to any Compound or any Licensed Product which are devoted to the progression of a potential pharmaceutical product in Clinical Studies and any other activities directed toward quality issues, publication, Regulatory Approval, formulation, production or CMC of such Compound or Licensed Product, including any other pre-launch activities.

1.27 "**Disputed Claim**" has the meaning set forth in Section 9.4(b).

1.28 "**Dollar**" or "\$" means the lawful currency of the United States.

1.29 "**Drug Approval Application**" means an application for Regulatory Approval of a Licensed Product as a pharmaceutical product in a country in the Territory.

1.30 "**Effective Date**" has the meaning set forth in the Preamble hereof.

1.31 "**Field**" means the treatment of cancer in humans, apart from ophthalmic uses and use as eye-drops

1.32 "**First Commercial Sale**" means, with respect to any Licensed Product, the first sale to a Third Party for end use or consumption of such Licensed Product in a country in the Territory by Athenex, its Affiliates or sublicensees after receipt of Regulatory Approval in such country or, where Regulatory Approval is not required, then the first sale for end use or consumption of a Licensed Product to a Third Party in that country in the Territory in connection with the nationwide introduction of such Licensed Product in that country by Athenex, its Affiliates or sublicensees.

1.33 "**Generic Competition**" shall be deemed to exist in a particular country as of any date if, during the two (2) immediately preceding Calendar Years, (a) a Generic Product has a market share in the applicable country of at least twenty-five percent (25%) of the then combined unit volume of the competing Licensed Product and the Generic Product, or (b) Net Sales by Athenex in the applicable country decrease by at least twenty-five percent (25%) with each of (a) and (b) measured as an average taken over such two (2) Calendar Years as compared to the Calendar Year of Peak Sales.

1.34 "**Generic Product**" means any product containing any Compound as an active pharmaceutical ingredient sold by a Third Party (excluding, for these purposes, an Affiliate or sublicensees of Athenex).

1.35 "**IFRS**" means International Financial Reporting Standards as adopted by the International Accounting Standard Board or the Generally Accepted Accounting Principles as adopted in the United States ("**GAAP**") will be consistently applied in each country based on the current accounting standards predominately utilized in such country. If a country does not utilize either GAAP or the international accounting standards, the international accounting standards shall be applied in such country.

1.36 "**Improvements**" means all inventions and Know-How, patentable or otherwise, made, created, developed, conceived or reduced to practice by or on behalf of a Party and/or any of its Affiliates pursuant to activities relating to or contemplated by this Agreement during the Agreement Term, that have application or relate to a Compound or a Licensed Product for use in the Field including developments in the manufacture, formulation, ingredients, preparation, presentation, means of delivery or administration, dosage, indication, methods of use or packaging and/or sale of a Compound or a Licensed Product.

1.37 "**IND**" means an Investigational New Drug application, this carries the same meaning to what is described in the United States in 21 C.F.R. Section 312.23, obtained for purposes of conducting clinical trials in accordance with the requirements of the Act and the regulations promulgated thereunder, including all supplements and amendments thereto relating to the use of a Compound or Licensed Product in the Field.

1.38 "**Initiation**" means when an IND is submitted for Clinical Studies to the Regulatory Authority of the applicable country.

1.39 "**Insurance**" has the meaning set forth in Section 9.6(a). 0

1.40 "**Intellectual Property**" means Patent Rights, Know-How, Copyrights, and Trademarks collectively, including applications thereof, relating to the Compound(s) or Licensed Products, as well as any Improvements thereto.

1.41 "**Know-How**" means all proprietary information and technology, including trade secret information, developments, discoveries, methods, techniques, formulations, Data, and other information, whether or not patentable, that relate to any Compound or any Licensed Product, or any Improvement.

1.42 "**Law(s)**" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the binding effect of law of any governmental authority.

1.43 "**Licensed Product(s)**" means any and all pharmaceutical preparations in final form (or, where the context so indicates, the form under development) containing any Compound as an active pharmaceutical ingredient for use in the Field in the Territory.

1.44 "**Losses**" means any and all damages, awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties (including penalties imposed by any governmental authority), costs, fees, liabilities, obligations, taxes, liens, losses, lost profits and expenses (including court costs, interest and reasonable fees of attorneys, accountants and other experts) awarded or otherwise paid or payable to Third Parties.

1.45 "**NDA**" means a New Drug Application in any of the countries in the Territory.

1.46 "**Net Sales**" means the gross sales amount of Licensed Products invoiced to Third Parties by Athenex, its Affiliates and sublicensees, less the following deductions (to the extent included in such gross sales amount):

(a) quantity and/or cash discounts therefor;

(b) customs, duties, sales and similar taxes;

(c) amounts allowed or credited by reason of rejections, return of goods (including as a result of recalls, market withdrawals and other corrective actions), and retroactive price reductions or allowances specifically identifiable as relating to a Licensed Product including allowances and credits related to inventory management or similar agreements with wholesalers;

(d) amounts incurred resulting from government (or any agency thereof) mandated rebate programs in the Territory;

(e) Third Party rebates, patient discount programs, administrative fees and chargebacks or similar price concessions related to the sale of a Licensed Product;

(f) bad debt recognized for accounting purposes as not collectible;

(g) the expenses for insurance, freight, packing, shipping and transportation;

(h) commissions paid to agents or distributors to secure tender offers or other purchases by local authorities; and

(i) as agreed by the Parties, such agreement not to be unreasonably withheld, any other specifically identifiable amounts included in a Licensed Product's gross sales amount that were or ultimately will be credited and that are similar to those listed above, all in accordance with IFRS.

All such discounts, allowances, credits, rebates and other deductions shall be fairly and equitably allocated to a Licensed Product, and, to the extent applicable, other products or services of Athenex or its Affiliates or sublicensees such that the Licensed Products do not bear a disproportionate portion of such deductions. For the avoidance of doubt, Net Sales shall not include sales by Athenex to its Affiliates or sublicensees for resale; *provided that*, if Athenex sells Licensed Products to an Affiliate or sublicensee for resale, then the Net Sales calculation shall include the amounts invoiced by such Affiliate or sublicensee to Third Parties on the resale of such Licensed Products.

For purposes of this Agreement, “**sale**” (including for purposes of the definition of First Commercial Sale) shall not include transfers or other distributions or dispositions of Licensed Products, at no charge, for regulatory purposes, clinical trials, samples, free products or in connection with patient assistance programs or other charitable or compassionate purposes or to physicians or hospitals for promotional purposes. Licensed Products shall be considered “**sold**” only when billed or invoiced.

1.47 “**Ongoing Clinical Study**” means Clinical Studies with enrolled patients that are in the process of being conducted. For the avoidance of doubt, this does not include Clinical Studies where no patient dosing has occurred regardless of enrollment of patients.

1.48 “**Party**” means Avalon or Athenex, as the context may require.

1.49 “**Parties’ Patent Rights**” has the meaning set forth in Section 6.3(a).

1.50 “**Patent Rights**” means any patents, patent applications, certificates of invention, or applications for certificates of invention and any supplemental protection certificates, together with any extensions, registrations, confirmations, reissues, substitutions, divisions, continuations or continuations-in-part, reexaminations or renewals thereof that relate to the Compound, any Licensed Product or any Improvement, including methods of development, manufacture, formulation, preparation, presentation, means of delivery or administration, dosage, packaging, sale or use relating to the Compound, Licensed Product or Improvement.

1.51 “**Peak Sales**” means the highest Net Sales of the applicable Licensed Product achieved during any Calendar Year following the First Commercial Sale of such Licensed Product within each applicable country within the Territory.

1.52 "**Phase I Clinical Study(ies)**" means the initial introduction of an investigational new drug into humans primarily designed to determine the metabolism and pharmacologic actions of the drug in humans, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness, and may also include studies of drug metabolism, structure-activity relationships, and mechanism of action in humans, as well as studies in which investigational drugs are used as research tools to explore biological phenomena or disease processes.

1.53 "**Phase II Clinical Study(ies)**" means the Clinical Study related to the License Product that, in particular, will show the efficacy of the Licensed Product and also provide guidance to the effective dose regimen required. In general, this type of study will determine the effective dose regimen for the clinical indication. Safety data is also collected in this type of study.

1.54 "**Phase III Clinical Study(ies)**" means the Clinical Study related to the License Product that, in particular, is a registration study designed to demonstrate statistically (p-value of less than 0.05 or <0.025 for split-alpha study design) the efficacy of the drug for specific indications. This type of study is usually conducted after agreement with the Regulatory Authority that a positive result from such a study conducted under good clinical practice will be enough for the Regulatory Authority to provide marketing approval of the product.

1.55 "**PolyU**" means PolyU Technology and Consultancy Limited, a company existing under the laws of Hong Kong.

1.56 "**PolyU License**" means that certain Exclusive License Agreement between Avalon and PolyU, dated September 30, 2016, as the same may be amended hereafter.

1.57 “**PolyU Patents**” means all Patents licensed to Avalon under the PolyU license, including, without limitation, those listed on Schedule 1.57.

1.58 “**PolyU Technology**” means all Technology (as defined in the PolyU License) licensed to Avalon under the PolyU license.

1.59 “**Prime Rate**” means the rate announced from time to time by HSBC Bank, N.A. as its “**prime rate**” in New York, New York, USA which is the base rate upon which other rates charged at such bank are based and is the best rate available to premium customers at such bank.

1.60 “**Product Label(ing)**” shall have the same meaning as defined in the Act and as interpreted by the Regulatory Authority in each country in the Territory.

1.61 “**Program**” means the Avalon program dedicated to the research, discovery and development of Compounds.

1.62 “**Proprietary Information**” means any and all scientific, clinical, technological, regulatory, marketing, financial and commercial information or data, whether communicated in writing, orally or by any other means, which is owned and under the protection of one Party and is provided by that Party to the other Party in connection with this Agreement, and shall include Avalon Know-How and Athenex Know-How, as applicable.

1.63 “**Regulatory Approval**” means approval by the relevant Regulatory Authority of an NDA or other Drug Approval Application, health registration, common technical document, regulatory submission, notice of compliance and any other license or permit required to be approved for the supply, manufacture, use, storage, distribution, import, export, transport, promotion, marketing and sale of a Licensed Product in a country, region or other regulatory jurisdiction.

1.64 "**Regulatory Authority**" means any governmental authority in a country, region or other regulatory jurisdiction that regulates the supply, manufacture, use, storage, distribution, import, export, transport, promotion, marketing and sale of a Licensed Product.

1.65 "**SEC**" means the United States Securities and Exchange Commission and any successor agency having substantially the same functions.

1.66 "**Substantial Level Generic Competition**" shall be deemed to exist in a particular country as of any date if, during the two (2) immediately preceding Calendar Years, (a) a Generic Product has a market share in the applicable country of at least fifty percent (50%) of the then combined unit volume of the competing Licensed Product and the Generic Product, or (b) Net Sales by Athenex in the applicable country decrease by at least fifty percent (50%) with each of (a) and (b) measured as an average taken over such two (2) Calendar Years as compared to the Calendar Year of Peak Sales.

1.67 "**Territory**" means worldwide.

1.68 "**Third Party(ies)**" means a person or entity who or which is neither a Party nor an Affiliate of a Party.

1.69 "**Valid Claim**" means any claim in an active patent application or issued in an unexpired patent which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction following exhaustion of all possible appeal processes, and which has not been admitted to be invalid or unenforceable through reissue, reexamination or disclaimer and has not been terminated for failure to pay maintenance fees.

## ARTICLE 2 GRANT OF RIGHTS

**2.1 Grants by Avalon.** Subject to the terms and conditions of this Agreement, Avalon hereby grants to Athenex and its Affiliates an exclusive right and license throughout the Territory (including the right to grant sublicenses to Third Parties located within the Territory with prior written notice to Avalon) to practice under the Avalon Intellectual Property in order to develop, label, package, import, export, promote, distribute, make, use, sell, offer for sale, register, commercialize and otherwise exploit the Compounds and Licensed Products containing the Compounds in the Field; *provided, however,* that, notwithstanding the exclusive rights granted to Athenex hereunder, Avalon shall retain the right to use the Avalon Intellectual Property in the Field solely as necessary to perform its obligations under this Agreement.

**2.2 Retained Rights; No Implied Licenses.** All rights not specifically granted to Athenex under this Agreement are reserved and retained by Avalon. Nothing in this Agreement shall be deemed to constitute the grant of any license or other right to Athenex, to or in respect of any product, patent, trademark, Proprietary Information, trade secret or other data or any other intellectual property of the other Party, except as set forth under this Agreement. Avalon retains the right to manufacture Compounds outside the Field. For the avoidance of doubt, Avalon shall not manufacture, market, distribute, sell, import or license Compounds or the Licensed Products within the Field.

## ARTICLE 3 INFORMATION TRANSFER; DEVELOPMENT AND COMMERCIALIZATION; REGULATORY MATTERS

**3.1 Information and Transfer of Avalon Intellectual Property.** As soon as practicable, but in no event later than thirty (30) days after the Effective Date, Avalon shall disclose and deliver to Athenex electronic copies in the English language (or, upon Athenex's

request, copy of the originals) of all Data included in the Avalon Intellectual Property licensed to Athenex hereunder or necessary for continued Development and Commercialization in the Territory including, but not limited to, English translations of those items listed on Schedule 3.1. In addition to the foregoing, Avalon shall provide Athenex with such assistance as Athenex may reasonably request (at Athenex's cost and expenses) in connection with the foregoing disclosures, including making available at their place of employment (or such other location as the Parties may mutually agree upon) the assistance of such persons that were involved with the Program, Clinical Studies and the Avalon Intellectual Property.

**3.2 Ongoing Disclosure.** At least twice in each Calendar Year, Avalon shall disclose and deliver to Athenex electronic copies in the English language (or, upon Athenex's request, copies of the originals) all discoveries and developments within its Program including all new Compounds, new Data, and the Avalon Intellectual Property as necessary for continued Development and Commercialization in the Territory.

**3.3 Development and Commercialization.**

(a) **General.** Athenex shall be responsible for and shall itself, or through its Affiliates or sublicensees, conduct Development and Commercialization in the Territory during the Agreement Term as described by this Agreement. Within ninety (90) days after the Effective Date, Athenex shall prepare a draft Development plan, in English, consistent with regional development requirements. A budget, in English, related to the Development and Commercialization for countries within the Territory will also be submitted to the Development and Commercialization Steering Committee (as defined in Section 3.5) which will agree on and oversee the plan for Development and Commercialization during the Agreement Term.

(b) If Athenex fails to

(i) file an IND with the Regulatory Authority in the United States within six (6) months after the latest of (x) Athenex's receipt from Avalon, as provided for in Section 3.1, of all English translations necessary for the filing of an IND with the Regulatory Authority in the United States, (y) the date Avalon and Athenex agree that all studies necessary for the filing of an IND with the Regulatory Authority in the United States have been completed, or (z) the date of the final study report for the last of any additional studies that are necessary for the filing of an IND with the Regulatory Authority in the United States, or

(ii) commence Clinical Studies for a Licensed Product within twelve (12) months after the date of approval of an IND by the Regulatory Authority in the United States,

with both (i) and (ii) above subject to an extension on the foregoing timelines of up to twelve (12) months at the reasonable request of Athenex, Avalon shall have the option, if it elects to do so within sixty (60) days after the end of the applicable period, to terminate all rights and licenses under this Agreement upon the end of the applicable period as such period may be extended.

(c) **Summary Reports.** Upon Avalon's sixty (60) day prior written request, made within thirty (30) days after the end of the first Calendar Year following the Effective Date and each year thereafter during the Agreement Term, if timely requested, Athenex shall provide Avalon with a written summary of Development and Commercialization undertaken on a country by country basis during the then current Calendar Year consistent with written reports issued by Athenex in the ordinary course of its business.

**(d) Clinical Studies.** Athenex will, either directly or through its Affiliates or sublicensees, conduct and administer all the Clinical Studies in the Territory for Licensed Products as identified and agreed upon in the Development Plan or as approved from time to time by the Development and Commercialization Steering Committee.

**(e) Referencing Data.** The Data and results of any Clinical Studies or other studies conducted by a Party or its partners shall be made available to the other Party for referencing at no cost to the requesting Party for regulatory filing purposes, and each party hereby grants to the other Party a right of reference to use such Data for the Development and Commercialization of the Compounds and Licensed Products, *provided, however,* that with respect to the right granted to Athenex, such right shall be limited to the Development and Commercialization of the Compounds and the Licensed Products in the Field in the Territory and for Avalon shall be limited to the Development and Commercialization of the Compounds outside the Field.

**(f) Payment of Development and Commercialization Costs.** Athenex shall be responsible for all costs associated with Development and Commercialization in the Field. Notwithstanding the generality of the foregoing, Athenex shall reimburse Avalon for the direct and actual costs incurred by Avalon in carrying out any Development within the Field that was authorized or approved in writing in advance by Athenex, subject to a full accounting of such direct costs.

(g) **Records.** Under this Agreement, Athenex shall maintain records, in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes and in accordance with good industry practice, which shall be complete and accurate in all material respects and shall fully and properly reflect all work done and results achieved, including all Know-How and including individual case report forms, in the form required by applicable Laws. Avalon shall have the right, upon at least sixty (60) days prior written notice to Athenex and no more than once in any Calendar Year, to inspect and audit such records. Avalon shall reimburse Athenex for any costs incurred by Athenex with respect to any such inspection and audit by Avalon.

(h) **Promotional Materials and Activities.** Athenex shall create and develop the advertising and promotional materials for the Licensed Products in the Territory in its sole discretion and shall own all intellectual property rights in and to the same. As holder of the Regulatory Approvals in the Territory, Athenex shall be responsible for all submissions and interactions with the Regulatory Authorities regarding approval of all Licensed Product-related promotional materials that require Regulatory Approval.

(i) **Sales of Licensed Products.** All sales of Licensed Products shall be made, recorded, invoiced and collected by Athenex or its Affiliates or sublicensees. All terms regarding Licensed Product sales, including terms with respect to credit, pricing, cash discounts, rebates, chargebacks, bad debt write-offs, and other fees and charges, and returns and allowances shall be set solely by Athenex in accordance with reasonable industry standards.

(j) **Approvals.** During the Agreement Term, Avalon shall use its Commercially Reasonable Efforts to assist Athenex to procure, in accordance with regulatory requirements and as requested by Athenex, the requirements for Licensed Products for Clinical Studies and Regulatory Approval in the Territory.

**3.4 Regulatory Matters.**

**(a) Responsibility of Athenex.**

From and after the Effective Date:

(i) Athenex shall have sole authority and responsibility for the timely preparation, filing and prosecution of all filings, submissions, authorizations or approvals with Regulatory Authorities, and shall own and control all such filings, submissions, authorizations and approvals, including any IND, NDA or other Drug Approval Application in the Territory in accordance with reasonable industry standards. Athenex shall provide copies of all such filings, submissions, authorizations and approvals upon reasonable request from Avalon, at Avalon's sole cost and expense.

(ii) Athenex shall be the primary contact with each Regulatory Authority in the Territory and shall be solely responsible for all communications with each Regulatory Authority that relate to any IND, NDA, or other Drug Approval Application in the Territory, *provided, however,* that upon the reasonable request of Athenex, Avalon shall provide appropriate personnel to participate in discussions with a Regulatory Authority regarding the regulatory review process and shall assist and consult with Athenex in applying for Regulatory Approval at Athenex's cost and expense.

(iii) From and after receipt of each Regulatory Approval, Athenex shall have exclusive authority and responsibility to submit all reports or amendments necessary to maintain Regulatory Approvals and to seek revisions of the conditions of each such Regulatory Approval in the Territory and shall keep

Avalon reasonably informed of any material actions. Athenex shall have sole authority and responsibility to seek and/or obtain any necessary approvals for any Product Label, or prescribing information, package inserts, monographs and packaging used in connection with a Licensed Product, in addition to promotional materials used in connection with a Licensed Product in the Territory. Athenex shall determine whether the foregoing items require Regulatory Approval in the Territory.

**(b) Responsibility of Avalon.**

(i) Avalon shall fully cooperate and assist Athenex, upon Athenex's request, with respect to Athenex's performance of its obligations under this Agreement. Avalon shall not be required, however to incur any Third Party costs to meet its obligation to cooperate and assist Athenex under this Section. If Avalon's cooperation and assistance will be limited due to Third Party costs, Avalon shall provide Athenex an estimate, including supporting documentation, of such Third Party costs. Unless otherwise agreed herein, or with the prior agreement of Athenex otherwise, Athenex shall not be responsible for any payment to Avalon in consideration of any cooperation or assistance rendered by Avalon.

(ii) Each Party is responsible for matters concerning adverse drug reactions, safety information and compliance with regulatory requirements. Each Party shall, upon the request of the other Party, provide any such data in each Party's actual possession to the other Party that is required by any Regulatory Authority. The Parties hereby agree that they will each make their best Commercially Reasonable Efforts in coordinating their respective regulatory, Development and Commercialization efforts under this Agreement.

**3.5 Appointment and Administration of Development and Commercialization Steering Committee for the Territory.**

(a) As soon as practicable after the execution of this Agreement and in no event later than thirty (30) days after the Effective Date, the Parties will establish a four (4) person steering committee to oversee and review the Development and Commercialization of the Licensed Products in the Territory, which will include two (2) representatives of each of Athenex and Avalon (the “**Development and Commercialization Steering Committee**”) and will be chaired by one of the representatives of Athenex. All actions, decisions and approvals of the Development and Commercialization Steering Committee shall be determined upon an affirmative majority vote of its members. One (1) member appointed by each Party will be a senior officer of such Party who is either (i) responsible for product development or (ii) has substantial experience in product development for similar products who is acceptable to the other Party. Each Party, at its sole discretion, may at any time during the Agreement Term replace either of its appointed members with prior written notice to the other Party. Each Party will use commercially reasonable efforts to cause its respective representatives to attend all meetings of the Development and Commercialization Steering Committee. Each Party will bear its respective travel and out-of-pocket expenses incurred by its members or representatives in connection with the Development and Commercialization Steering Committee’s meetings.

(b) The Development and Commercialization Steering Committee will meet at least once every Calendar Quarter or more or less frequently as the Parties mutually deem appropriate, at a time and place agreed by the Parties. The Development and Commercialization Steering Committee may also convene, vote or hold discussions from time to time through other methods of communication, as deemed necessary or appropriate by the Parties, including without limitation, telephone, video conference or email.

(c) In the event there is a disagreement among the members of the Development and Commercialization Steering Committee, the members of the Development and Commercialization Steering Committee shall promptly present such issue in dispute to the relevant executive at Athenex and Avalon who has the principal responsibility for the work under this Agreement. Once informed, the executives shall meet to discuss each party's view and to clarify the basis for such disagreement. If such executives are unable to resolve such dispute within thirty (30) days of such meeting, (i) such dispute shall be submitted to a panel of three independent experts agreed upon by Avalon and Athenex if it is a clinical dispute, (ii) such dispute (if other than clinical) shall be submitted to arbitration if it is within the framework of this Agreement, or (iii) Athenex's decision shall be final and binding if such dispute is not clinical or within the framework of this Agreement and is applicable to issues only within the Territory. The arbitration shall be conducted in Singapore in accordance with the Singapore International Arbitration Centre Rules. If a disagreement or dispute under this Section results in a delay in Athenex's ability to meet any timeline provided for in this Agreement, such timeline shall be extended for a period of time equal to the length of such delay.

(d) The Development and Commercialization Steering Committee shall be responsible for approval and amendment, from time to time, of the plan for Development and Commercialization.

#### **ARTICLE 4 PAYMENTS AND STATEMENTS**

**4.1 Upfront Fee.** Upon execution of this Agreement, Athenex shall pay to Avalon US \$3,000,000 in immediately available funds and Athenex, Inc., the parent of Athenex (“Parent”), will issue to Avalon that number of unregistered shares of common stock of Parent determined by dividing (a) US \$2,000,000 by (b) the lesser of (i) the price per share at which the Parent’s common stock closed on NASDAQ on the Effective Date, or (ii) the volume weighted average price per share of a share of the Parent’s common stock as traded on NASDAQ over the 10-trading day period prior to and including the Effective Date.

**4.2 Milestone Payments.**

(a) Athenex will pay the following amounts to Avalon upon occurrence (if ever) of the following events:

- (i) US \$\*\*\* within thirty (30) days following the first time Athenex files an IND for a Licensed Product;
- (ii) US \$\*\*\* within thirty (30) days following the first time Athenex initiates the first Phase I Clinical Study for any Licensed Product;
- (iii) US \$\*\*\* within thirty (30) days following the first time Athenex initiates the first Phase II Clinical Study for any Licensed Product;

- (iv) US \$\*\*\* within thirty (30) days following the first time Athenex initiates the first Phase III Clinical Study for any Licensed Product;
- (v) US \$\*\*\* within thirty (30) days following the first time Athenex files the first NDA for any Licensed Product;
- (vi) US \$\*\*\* within thirty (30) days following Athenex obtaining its first Regulatory Approval in the United States for any Licensed Product;
- (vii) US \$\*\*\* within thirty (30) days following Athenex obtaining its first Regulatory Approval in the European Union for any Licensed Product;
- (viii) US \$\*\*\* within thirty (30) days following Athenex obtaining its first Regulatory Approval in the People's Republic of China for any Licensed Product; and
- (ix) US \$\*\*\* within thirty (30) days following Athenex obtaining its first Regulatory Approval in Japan for any Licensed Product.

Athenex shall only be obligated to pay once with respect to the above milestones for any Licensed Product. For clarification, if Athenex (x) files for more than one IND for one or more Licensed Products it shall only have to make the above payment for the first IND filed and not for each IND filed, (y) engages in more than one Phase I Clinical Study, Phase II Clinical Study and/or Phase III Clinical Study for one or more Licensed Products, it shall only have to make the above payment for the first such Phase I Clinical Study, Phase II Clinical Study and/or Phase III Clinical Study and not subsequent ones, and (z) files for more than one NDA for one or more Licensed Products it shall only have to make the above payment for the first NDA filed and not for each NDA filed.

(b) If, prior to the satisfaction of all of the milestones in Section 4.2(a), Athenex sublicenses all of its Development and Commercialization rights in the Territory, Athenex will procure the third party to assume all relevant milestone payments.

**4.3 Royalties.**

(a) During each Calendar Quarter during the Agreement Term, Athenex shall, pursuant to Section 4.4(a), pay to Avalon a royalty on annual (Calendar Year) aggregate Net Sales of Licensed Product by Athenex and its Affiliates in the Territory based upon the following tiered royalty rates (“**Athenex Royalties**”):

- |   |      |
|---|------|
| (i) For the amount of such annual Net Sales ≤ US \$50M  | ***% |
| (ii) For the amount of such annual Net Sales > US \$50M | ***% |

For example, if the annual Net Sales for a given year is US \$70M, then Athenex shall pay a royalty of \*\*\*% on the first US \$50M (\$\*\*\*\*) and \*\*\*% on the remaining US \$20M (\$\*\*\*).

(b) The tiered royalty rates set forth in 4.3(a) shall be (i) reduced by forty percent (40%) for a Licensed Product in each country in which Generic Competition exists and (ii) terminated for a Licensed Product in each country in which Substantial Level Generic Competition exists; *provided, however,* that if Substantial Level Generic Competition exists in a country for all Licensed Products, then the Royalty Term and Agreement Term shall terminate with respect to such country, and no further royalties shall be payable by Athenex to Avalon in the subject country.

(c) During each Calendar Quarter during the Agreement Term, Athenex shall, pursuant to Section 4.3(a), pay to Avalon a royalty on annual (Calendar Year) aggregate Net Sales of all Licensed Products by all sublicensees equal to the lesser of (i) Fifty Percent (50%) of all royalties received by Athenex from the sublicensees based on Net Sales of the sublicensee as provided for in the applicable sublicense agreement or (ii) the amount payable if such royalty is calculated under Section 4.3(a) based on the Net Sales of the sublicensee (“**Sublicensee Royalties**”).

#### 4.4 Royalty Reports and Payments.

(a) **Royalty Payments.** Within sixty (60) days following the end of each Calendar Quarter during the Royalty Term, Athenex shall submit to Avalon an accounting report for such applicable Calendar Quarter for each relevant country within the Territory, which sets forth the gross sales, Net Sales and the Athenex Royalties and Sublicensee Royalties payable by Athenex to Avalon for such Calendar Quarter, with a breakdown of all deductions taken in any such calculations, in accordance with the definition of “Net Sales”. Any conversion to Dollars shall be calculated in accordance with Section 4.5(c). In the event of any royalty reduction during any Calendar Quarter due to Generic Competition in any country in the Territory, the report for such Calendar Quarter shall also provide the basis for the determination of such Generic Competition. Royalties shown to have accrued by each report shall be due and payable on the date such repayment is due.

(b) **Reports.** Athenex shall also furnish Avalon a written report for each Licensed Product in each relevant country within the Territory during the first four (4) Calendar Quarters commencing after the termination of the royalty obligations for such Licensed Product in that country stating the basis for Net Sales then being free of royalty obligations hereunder. Athenex shall thereafter have no further obligation to include in any written reports the Net Sales of such Licensed Product in such country for purposes of the royalty calculation for any Calendar Quarter. This obligation shall survive the termination or expiration of this Agreement in any such country.

**(c) Records.** Each Party shall keep and require its Affiliates and sublicensees to keep complete and accurate records in sufficient detail to permit accurate determination of all amounts necessary for calculation and verification of all payment obligations set forth in this Article 4 for a period of thirty-six (36) months from the end of the relevant Calendar Quarter.

**4.5 General Payment Provisions.**

**(a) Payment Method.** Except as contemplated by Section 4.5(c), all payments under this Agreement shall be made in Dollars by bank wire transfer in immediately available funds to an account designated by Avalon.

**(b) Withholding Taxes.** Athenex may deduct the amount of any taxes imposed on Avalon which are required to be withheld or collected by Athenex, its Affiliates or sublicensees under the laws, rules or regulations of any country on amounts owing from Athenex to Avalon hereunder. Any such taxes required to be withheld or collected shall be an expense of Avalon. To the extent Athenex, its Affiliates or sublicensees pay such withholding taxes to the appropriate governmental authority on behalf of Avalon; Athenex shall promptly deliver to Avalon proof of payment of such taxes. The Parties will cooperate with respect to all documentation required by any taxing authority or reasonably requested by either party to secure a reduction in the rate of, or the elimination of, applicable withholding taxes, and shall otherwise cooperate to reduce the rate of, or eliminate, applicable withholding taxes.

(c) **Currency Exchange.** For purposes of computing royalties on Net Sales in any country outside the United States, the Net Sales shall be converted to Dollars using the year-to-date average rate of exchange for Dollars used by Athenex for its internal financial accounting purposes; *provided, however,* that if for any reason conversion into Dollars cannot be made in a country in the Territory, then notwithstanding the provisions of Section 4.5(a), payment may be made in the currency of such country by deposit in the name of Avalon in a bank account designated by it in such country.

(d) **Financial Accounting Standards.** Except as otherwise defined herein, all financial calculations by either Party under this Agreement shall be calculated in accordance with IFRS. In addition, all calculations shall give pro rata effect to and shall proportionally adjust (by giving effect to the number of applicable days in such Calendar Quarter) (i) for any Calendar Quarter that is shorter than a standard Calendar Quarter or any Calendar Year that is shorter than four (4) consecutive full Calendar Quarters, or (ii) as a result of a determination, in accordance with the terms of this Agreement, that the first or last day of such Calendar Quarter (including as a result of termination of this Agreement) shall be deemed other than the actual first or last day of such Calendar Quarter, or that the first or last day of such Calendar Year shall be deemed other than the actual first or last day of such Calendar Year.

#### 4.6 Audits.

(a) Upon the written request of Avalon, Athenex shall permit an independent certified public accounting firm of recognized standing, selected by Avalon and acceptable by Athenex (*provided that* such accounting firm shall not be retained or compensated on a contingency basis and shall have entered into a confidentiality

agreement with Avalon in form and substance reasonably satisfactory to Athenex), to have access not more than once in any Calendar Year, during normal business hours, to such of the records of Athenex as may be reasonably necessary to verify the accuracy of the reports under Section 4.4 hereof for any year ending not more than twenty four (24) months prior to the date of such request. The accounting firm shall disclose to Avalon whether the reports are correct or incorrect, the specific details concerning any discrepancies (including the accuracy of the calculation of Net Sales and the resulting effect of such calculations on the amounts payable by Athenex under this Agreement) and such other information that should properly be contained in a report required under this Agreement (the “**Audit Report**”).

(i) If such accounting firm concludes that additional amounts were owed during such year, and Athenex agrees with such conclusion, then Athenex shall pay the additional payments, together with interest at the Prime Rate on the amount of such additional payments, within thirty (30) days of the date Avalon delivers the Audit Report to Athenex. In the event that Athenex disagrees with the accounting firm’s conclusion, Athenex shall not have the obligation to make any additional payments to Avalon until there is a mutual agreement of the Parties regarding the amount owed by Athenex. For the avoidance of doubt, Athenex is not obligated to pay any interest for the period during which the Parties were in dispute of the accounting firm’s conclusion and amount owed thereunder. In the event such accounting firm concludes that amounts were overpaid by Athenex during such period, Avalon shall repay Athenex the amount of such overpayment, together with interest at the Prime Rate on the amount of such overpayment,

within thirty (30) days of the date the auditing Party delivers to the audited Party such accounting firm's Audit Report. The fees charged by such accounting firm shall be paid by Avalon, *provided, however,* that if the report shows that Athenex underpaid Avalon by more than five percent (5%) of the payments due hereunder for the period being reviewed is discovered, then the reasonable fees and expenses of the accounting firm shall be paid by Athenex.

(ii) Upon the expiration of twenty four (24) months following the end of any year for which Athenex has made payment with respect to such year, and in the absence of a contrary finding by an accounting firm pursuant to Section 4.6(a), such calculation shall be binding and conclusive upon Athenex or Avalon, and Athenex shall be released from any liability or accountability with respect to royalties or other payments for such year.

(b) Upon the written request of Avalon, Athenex shall permit PolyU to audit its books and records to the extent permitted by Section 6.2 of the PolyU License.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES; COVENANTS

**5.1 General Representations.** Each Party hereby represents and warrants to the other Party as follows:

(a) Such Party is a corporation or limited liability company duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation or formation, is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification and failure to have such would prevent it from performing its obligations under this Agreement;

(b) The execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary corporate action and do not and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it or any provision of its charter or bylaws; or (ii) conflict with or constitute a default under any other agreement to which such Party is a party;

(c) This Agreement has been duly executed and is a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms and conditions hereof, except as enforceability may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditor's rights generally, or (ii) general principles of equity, whether considered in a proceeding in equity or at law;

(d) Such Party is not under any obligation to any person or entity, contractual or otherwise, that is in conflict with the terms of this Agreement, nor shall such Party undertake any such obligation during the Agreement Term;

(e) Such Party has obtained all authorizations, licenses, permits, consents and approvals, governmental or otherwise, necessary for the execution and delivery of this Agreement, and to otherwise perform such Party's obligations under this Agreement;

(f) Neither Party, nor any of its Affiliates, are a party to, or are otherwise bound by, any oral or written agreement that will result in any person or entity obtaining any interest in, or that would give to any Third Party any right to assert any claim in or with respect to, any of such Party's or the other Party's rights under this Agreement; and

(g) Such Party shall perform its obligations hereunder in accordance with all applicable Laws.

**5.2 Additional Representations and Warranties of Avalon.** Avalon represents and warrants to Athenex that:

(a) As of the Effective Date in the Territory, (i) to Avalon's best knowledge, there is no Third Party infringement of any of the Avalon Intellectual Property; (ii) the Avalon Intellectual Property is in full force and effect where filed; (iii) the Avalon Patent Rights where filed are not subject to any pending or threatened re-examination, re-issue, opposition, interference, challenge, litigation proceeding or other claim; and (iv) in those countries in the Territory where Avalon has not filed or prosecuted any patent applications with respect to the Avalon Intellectual Property, Avalon shall cause and ensure that Athenex is granted Data exclusivity under this Agreement in all such countries and shall perform all necessary requirements in connection therewith.

(b) Avalon has not committed any act, or omitted to commit any act, that may cause the Avalon Patent Rights where filed to expire prematurely or be declared invalid or unenforceable, or that stops Avalon from enforcing the Avalon Patent Rights where filed against any Third Party;

(c) As of the Effective Date in the Territory, (i) Avalon has the sole right to use, disclose and enable Athenex to use and disclose (in each case under appropriate conditions of confidentiality) the Avalon Know-How; and (ii) the Avalon Intellectual Properly is not subject to any encumbrance, lien, license or claim of ownership by any Third Party (other than PolyU with respect to the PolyU Patents and PolyU Technology);

(d) At no time during the Agreement Term shall Avalon assign, transfer, encumber, dispose of, or grant rights in, or with respect to, the Avalon Intellectual Property in a manner that is inconsistent with the rights granted to Athenex under this Agreement;

(e) At no time during the Agreement Term shall Avalon, without Athenex's prior written consent, enter into any other agreements regarding the Avalon Intellectual Property, any Compound or any Licensed Product for the Field within the Territory;

(f) The Data and information provided to Athenex or its Affiliates prior to the Effective Date relating to the Compound has been accurate in all respects and Avalon has made no misrepresentation or omission in connection with such Data and information. Avalon has also provided Athenex or its Affiliates with access to complete summaries of all adverse events known to Avalon relating to any Compound;

(g) The Avalon Intellectual Property listed in Schedule 1.2 is the complete and exhaustive list of all current intellectual property and proprietary rights of Avalon necessary for the Development and Commercialization of the Licensed Products;

(h) The PolyU License is still in full force and effect without default and it constitutes the valid, legally binding and enforceable obligation of Avalon and PolyU. The copy of the PolyU License provided to Avalon is true, correct and complete and constitutes the entire agreement of the respective parties thereto relating to the subject matter thereof. All material obligations required to be performed by Avalon under the terms of the PolyU License have been performed. No act or omission has occurred or failed to occur which, with the giving of notice, the lapse of time or both would constitute a default under the PolyU License or permit termination, modification or acceleration thereunder. No transactions contemplated by this Agreement violate the PolyU License.

**5.3 PolyU License.**

(a) Avalon will comply with all terms of the PolyU License, including, without limitation, any obligations to pay PolyU royalties based on amounts paid to Avalon by Athenex hereunder. Within five (5) days after receiving the same, Avalon will provide Athenex with any notices of default it receives from PolyU or other notices or communications that it receives from PolyU that would reasonably be expected to be material to the PolyU License. Additionally, if Avalon receives notices of default it will keep Athenex immediately informed of the status of its remedy efforts and will give Avalon the right to cure such default and, if Athenex cures such default, it may offset the amount expended to cure such default against any amounts owed hereunder.

(b) Avalon may not terminate or amend the PolyU License in any material respect, which includes anything that would limit the rights granted to Avalon under the PolyU License, without Athenex's written consent.

**ARTICLE 6**  
**PATENT MATTERS**

**6.1 Ownership of Inventions.**

(a) Except as otherwise provided in and subject to the terms of this Agreement, as between the Parties:

(i) Avalon or, if applicable, its licensors shall have and retain all right, title and interest in or Control over, as applicable, all Avalon Intellectual Property (and Patent Rights arising thereunder) (i) existing, owned or Controlled by it on the Effective Date, subject to the licenses and other rights for the Field granted to Athenex under this Agreement and (ii) which is discovered, made, first conceived, reduced to practice or generated under this Agreement for the Field as a result of Development or otherwise during the Agreement Term solely by Avalon employees, agents, or other persons acting under or pursuant to its authority.

(ii) Athenex shall have and retain all right, title and interest in or Control over all Intellectual Property (and Patent Rights arising thereunder) which is discovered, made, first conceived, reduced to practice or generated under this Agreement both within and outside the Field as a result of Development or otherwise during the Agreement Term, solely by Athenex's employees, agents, or other persons acting under or pursuant to its authority.

(iii) Avalon and Athenex shall jointly own all right, title and interest in or Control over all Intellectual Property (and Patent Rights arising thereunder) which is discovered, made, first conceived, reduced to practice or generated under this Agreement both within and outside the Field as a result of Development or otherwise during the Agreement Term jointly by Avalon and Athenex employees, agents, or other persons acting under or pursuant to their authority ("Jointly Owned Intellectual Property"). With respect to Jointly Owned Intellectual Property, Avalon's interest in the same shall be deemed Avalon Intellectual Property and licensed to Athenex under Section 2.1. For the avoidance of doubt, the right, title and interest of a Party in, or control of, the Jointly Owned Intellectual Property shall survive the termination and expiration of this Agreement.

(iv) Athenex acknowledges that the PolyU Patents and PolyU Technology are owned by PolyU.

**(b) Employees and Agents.** Each of Avalon and Athenex shall require all of its and its Affiliates' employees to assign all inventions and corresponding patent applications that are discovered, made, first conceived, reduced to practice or generated by such employees during the Agreement Term to Avalon and/or Athenex according to the ownership principles described in Section 6.1(a) and subject to the laws of the country of employment. Each Party shall use Commercially Reasonable Efforts to require any Third Parties working on the Phase I Clinical Study or any Development under the Agreement or who receive materials relating to a Licensed Product or Know-How from a Party, to assign or grant a sublicensable exclusive license on a fully paid-up, royalty-free basis to all inventions and corresponding Patent Rights that are developed, made or conceived by such Third Parties during the Agreement Term to Avalon and/or Athenex according to the ownership principles described in Section 6.1(a).

#### 6.2 Maintenance and Prosecution.

**(a) Avalon Patent Rights.** Avalon shall have the first right to file, prosecute and maintain the Avalon Patent Rights in Avalon's name, by retaining patent counsel selected by Avalon and shall be responsible for the payment of all costs and fees relating to patent prosecution and maintenance. Avalon agrees to keep Athenex informed of the course of patent prosecution, application or other proceedings and to furnish Athenex, per its request, with copies of office actions received by Avalon from any Regulatory Authority within the Territory concerning Avalon Patent Rights. Athenex may request that Avalon make additional patent application filings within the Territory for the Avalon

Intellectual Property. If Avalon elects not to make such filings within a period of thirty (30) days from the date of such request, Athenex shall have the right to make the filing and prosecute the application in the name of and as agent for Avalon. In such event, Athenex shall be responsible for the payment of all costs and fees relating to patent filing, prosecution and maintenance.

(b) **Athenex Patent Rights.** Athenex shall have the sole right to file, prosecute and maintain the Athenex Patent Rights in Athenex's name, by retaining patent counsel selected by Athenex and shall be responsible for the payment of all costs and fees relating to patent prosecution and maintenance. Athenex agrees to keep Avalon informed of the course of patent prosecution, application or other proceedings and to furnish Avalon, per its request, with copies of office actions received by Athenex from any Regulatory Authority outside the Territory concerning Athenex Patent Rights. Athenex shall also have the first right to file, prosecute and maintain all Jointly Owned Intellectual Property in all countries in the Territory.

(c) The responsible Party under this Section 6.2 shall solicit the other Party's review of the nature and text of any patent applications within the Territory and important prosecution matters related thereto in reasonably sufficient time prior to the filing thereof, and the responsible Party shall take into account the other Party's reasonable comments related thereto. Each Party shall execute all documents and take all actions as are reasonably requested by the other Party with respect to any filings and registrations.

**6.3 Third Party Infringement.**

(a) Each Party shall promptly give the other Party notice of any actual or suspected infringement by a Third Party in the Territory of any patent included in the Avalon Patent Rights relating to the Licensed Products or Jointly Owned Intellectual Property (collectively, the “**Parties’ Patent Rights**”), which comes to such Party’s attention. In addition, Athenex shall give Avalon notice of any actual or suspected infringement which comes to its attention by a Third Party outside the Territory of any patent included in the Avalon Patent Rights relating to the Licensed Products or the Jointly Owned Intellectual Property. The Parties shall thereafter consult and cooperate to determine a course of action, including the commencement of legal action.

(b) Avalon shall have the first right to initiate and prosecute such legal action in the Territory at its own expense and in the name of Avalon and/or Athenex, or to control the defense of any declaratory judgment action in the Territory relating to the Parties’ Patent Rights, and Avalon shall provide Athenex with reasonable notice of any such action it commences and keep Athenex reasonably informed of any significant developments in such action. Athenex shall render, at its expense, all assistance reasonably requested in connection with any action taken by Avalon or to prevent such infringement (including reasonable attorneys’ fees). However, the control of such action, including whether to initiate any legal proceeding and/or the settlement thereof, shall be under the control of Avalon; *provided that* Avalon shall not settle any such claim or proceeding in a manner that adversely affects Athenex’s rights under this Agreement or which results in any monetary payment by or financial loss to Athenex, without Athenex’s prior written consent, which consent shall not be unreasonably withheld.

(c) If Avalon elects not to initiate and prosecute an infringement or defend a declaratory judgment action in any country in the Territory as provided in Section 6.3(b) within sixty (60) days after having become aware of such potential infringement, then Athenex may elect, which election shall be subject to the prior written consent of Avalon to take such action that is reasonably necessary and appropriate to terminate or prevent such infringement, including instituting an infringement proceeding, *provided, however,* that Athenex shall not enter into any settlement or compromise of any claim relating to the Parties' Patent Rights licensed hereunder or which results in any material monetary payment by or financial loss to Avalon, without Avalon's prior written consent, which consent shall not be unreasonably withheld.

(d) Avalon shall have the sole right to initiate and prosecute any legal action outside the Territory with respect to the Avalon Patent Rights relating to the Licensed Products, or the Jointly Owned Intellectual Property at its own expense and in the name of Avalon and/or Athenex, or to control the defense of any declaratory judgment action outside the Territory relating to such Patent Rights. However, the control of such action, including whether to initiate any legal proceeding and/or the settlement thereof, shall solely be under the control of Avalon.

(e) For any legal action or defense contemplated by this Section 6.3, in the event that any Party is unable to initiate, prosecute, or defend such action solely in its own name, the other Party will join such action voluntarily and will execute all documents necessary for the Party to prosecute, defend and maintain such action. In connection with any such action, the Parties will cooperate fully and will provide each other with any information or assistance that either reasonably may request. Any recovery or award obtained by either Party as a result of any such action or settlement shall be shared as follows:

- (i) the Party that initiated and prosecuted, or maintained the defense of, the action shall recoup all of its costs and expenses (including reasonable attorneys' fees) incurred in connection with the action, whether the recovery is by settlement or otherwise;
- (ii) the other Party then shall, to the extent possible, recover its reasonably documented costs and expenses (including reasonable outside attorneys' fees) incurred in connection with the action; and
- (iii) regardless of the Party initiating the action, each Party shall be entitled to fifty percent (50%) of the remaining recovery amount attributable to the Territory.

**6.4 Third Party Intellectual Property.**

(a) In the event that a Party becomes aware of any claim that the practice by either Party of Know-How or Patent Rights or manufacture, import, use or sale of any Licensed Product hereunder infringes the intellectual property rights of any Third Party in the Territory, such Party shall promptly notify the other Party. The Parties shall thereafter discuss the situation, and to the extent reasonably necessary, attempt to agree on a course of action.

(b) If within ten (10) Business Days the Parties fail to agree upon an appropriate course of action in the Territory, Athenex shall have the first right, but not the obligation, to defend any action in the Territory related to the intellectual property rights of any Third Party or to initiate and prosecute legal action in the Territory related to the intellectual property rights of any Third Party in the name of Athenex and/or Avalon. Athenex shall keep Avalon reasonably informed as to the progress of any such action.

Avalon shall render, all assistance reasonably requested in connection with any action taken by Athenex. However, the control of such action, including whether to initiate any legal proceeding and/or the settlement thereof, shall solely be under the control of Athenex; *provided that* Athenex shall not settle any such claim or proceeding in a manner that materially adversely affects Avalon's rights under this Agreement or which results in any material monetary payment by or financial loss to Avalon, without Avalon's written consent, which consent shall not be unreasonably withheld. Avalon shall pay for all costs and expenses incurred by Athenex in such defense. In addition, Avalon shall pay all damages awarded or settlement payments made (including future royalty or similar payments) to such Third Party.

(c) If Athenex elects not to defend an infringement action in any country in the Territory as provided in Section 6.4(b), and Avalon elects to do so, the cost of any agreed-upon course of action, including the costs of any legal action commenced or any infringement action defended, shall be borne solely by Avalon, *provided, however,* that Avalon shall not enter into any settlement or compromise of any claim which results in any financial loss to Athenex without the prior written consent of Athenex, which consent shall not be unreasonably withheld, and Avalon shall pay all damages awarded or settlement payments made (including future royalty or similar payments) to such Third Party. For any such legal action or defense, in the event that any Party is unable to initiate, prosecute, or defend such action solely in its own name, the other Party will join such action voluntarily and will execute all documents necessary for the Party to prosecute, defend and maintain such action. In connection with any such action, the Parties will cooperate fully and will provide each other with any information or assistance that either reasonably may request and all costs incurred in relation to such action shall be borne solely by Avalon.

**6.5 Patent Term Extensions.** The Parties shall cooperate with each other in obtaining patent term extensions or restorations or supplemental protection certificates or their equivalents in any country in the Territory where applicable and where desired by Athenex. Elections with respect to obtaining such extension or supplemental protection certificates shall be made in the same manner and with the same relative priorities between the Parties as is applicable to the prosecution and maintenance of Patent Rights pursuant to Section 6.2.

**6.6 Patent Marking.** Athenex shall mark, and shall require its Affiliates and sublicensees to mark, all Licensed Products sold or distributed pursuant to this Agreement in accordance with the applicable patent statutes or regulations in the country or countries of manufacture and/or sale thereof.

## **ARTICLE 7 CONFIDENTIALITY AND PUBLICITY**

**7.1 Non-Disclosure and Non-Use Obligations.** All Proprietary Information disclosed by one Party to the other Party hereunder shall be maintained in confidence and shall not be disclosed to any Third Party or used for any purpose except as expressly permitted herein without the prior written consent of the Party that disclosed the Proprietary Information to the other Party during the term of this Agreement and for a period of ten (10) years thereafter. The foregoing non-disclosure and non-use obligations shall not apply to the extent that such Proprietary Information:

- (a) is known by the receiving Party at the time of its receipt, and not through a prior disclosure by the disclosing Party, as documented by records;

(b) is or becomes properly in the public domain or knowledge without breach by either Party;

(c) is subsequently disclosed to a receiving Party by a Third Party who may lawfully do so and is not under an obligation of confidentiality to the disclosing Party; or

(d) is developed by the receiving Party independently of Proprietary Information received from the disclosing Party, as documented by records.

**7.2 Permitted Disclosure of Proprietary Information.** Notwithstanding Section 7.1, a Party receiving Proprietary Information of another Party may disclose such Proprietary Information:

(a) to governmental or other regulatory agencies in order to obtain patents pursuant to this Agreement, or to gain approval to conduct Clinical Studies or to market a Licensed Product, but such disclosure may be only to the extent reasonably necessary to obtain such patents or authorizations and in accordance with the terms of this Agreement or as otherwise requested by the Regulatory Authorities;

(b) by Athenex to its agents, consultants, sublicensees or Affiliates in connection with the Development or Commercialization, or to otherwise enable Athenex to fulfill its obligations and responsibilities under this Agreement, on the condition that such entities agree to be bound by confidentiality obligations consistent with this Agreement; or

(c) if required to be disclosed by law or court order; *provided that* notice is promptly delivered to the non-disclosing Party in order to provide an opportunity to challenge or limit the disclosure obligations.

(d) **Certain Disclosures.** Except as set forth in this Agreement or as required by law, neither Party shall make any press release or other public announcement or other public disclosure to a Third Party concerning the existence of or terms of this Agreement, the subject matter of this Agreement or the activities contemplated hereunder, without the prior written consent of the other Party, which consent shall include agreement upon the nature and text of such release, announcement, or other disclosure, and shall not be unreasonably withheld or delayed. Each Party agrees to provide to the other Party a copy of any such press release or other public announcement or disclosure as soon as reasonably practicable under the circumstances prior to its scheduled release. Each Party shall have the right to expeditiously (but in any event within forty eight (48) hours) review and recommend changes to any such press release or other public announcement or disclosure; *provided, however,* that such right of review and recommendation shall only apply for the first time that specific information is to be disclosed, and shall not apply to the subsequent disclosure of substantially similar information that has previously been disclosed unless there have been material developments relating to any Licensed Product since the date of the previous disclosure; *provided, further,* that each Party shall provide to the other Party reasonable advance notice of any such subsequent disclosure. Without limiting the generality of any of the foregoing, it is understood that the Parties or their Affiliates may make disclosure of this Agreement and the terms hereof in accordance with the rules and regulations of the SEC, other governmental authority, or securities exchange, may file this Agreement as an exhibit to any filing with the SEC, other governmental authority, or securities exchange, and may distribute any such filing in the ordinary course of its business; *provided, further,* that except as required by

applicable Laws, Avalon and Athenex shall seek to redact any confidential information set forth in such filings, and each Party shall provide a draft of the redacted version of this Agreement to the other Party no less than five (5) Business Days prior to filing with the SEC, other governmental authority, or securities exchange, and give reasonable consideration to the other Party's comments regarding any proposed redaction.

**7.3 Publications.** Athenex shall not submit for written or oral publication any manuscript, abstract or the like relating to any Compound or any Licensed Product, without the prior approval or written request of Avalon. If Athenex desires to submit such publication, it shall first deliver to Avalon, for Avalon's prior written consent, the proposed publication or an outline of the oral disclosure at least thirty (30) days prior to planned submission or presentation.

## ARTICLE 8 TERM AND TERMINATION

**8.1 Term and Expiration.** This Agreement shall be binding on the Parties as of the Effective Date. Thereafter, unless terminated earlier pursuant to Section 8.2 below, this Agreement shall extend for a period which may expire on a country by country basis upon the earliest to occur of either (i) the expiration of the last of the Avalon Patent Rights or (ii) invalidation of substantially all of the Avalon Patent Rights (the "**Agreement Term**"). Notwithstanding the foregoing, after the occurrence of (i) or (ii) above, the Agreement Term shall automatically be extended for consecutive one (1) year periods subject to the same terms and conditions set forth herein (unless agreed otherwise) unless either Party gives written notice of its intention not to extend the Agreement term: (i) at least ninety (90) days prior to the expiration date of the Avalon Patent Rights; or (ii) as soon as practically possible in the case of an invalidation claim; and (iii) at least ninety (90) days prior to the then current expiration date of the Agreement thereafter.

**8.2 Early Termination of Agreement Term.**

**(a) Termination by Agreement.**

This Agreement may be terminated in whole or in part upon mutual written agreement of the Parties.

**(b) Termination by Athenex.**

Athenex may terminate in whole or in part this Agreement in its sole discretion upon not less than six (6) months prior written notice of termination provided any time after the Effective Date (*provided, however,* that no such termination shall be effective until the Completion of any then Ongoing Clinical Studies). The cost involved during the six (6) months on top of completing the Ongoing Clinical Studies will also be borne by Athenex. In addition, if any milestone is met per the Clinical Studies prior to the final termination date, Athenex will also be responsible for the milestone payment.

**(c) Termination by Either Party.**

Either Party may, without prejudice to any other remedies available to it under this Agreement or at law or in equity, terminate this Agreement prior to expiration of the Agreement Term in the event that any of the following occurs:

(i) The other Party (as used in this subsection, the “**Breaching Party**”) shall have materially breached or defaulted in the performance of any of its material obligations hereunder (including a breach of the representations and warranties set forth in this Agreement), and has not cured such breach within (i) thirty (30) days after notice of such breach is provided to the Breaching Party in case the breach is a non-payment of any amount due under this Agreement that is

not being disputed in good faith (which shall be deemed a material breach of a material obligation) or (ii) sixty (60) days after notice of such breach is provided to the Breaching Party for other cases of breach (or, if such default cannot be cured within such sixty (60) day period, if the Breaching Party does not commence and diligently continue actions to cure such default during such sixty (60) day period). The termination shall become effective at the end of the (i) thirty (30) day period in case the breach is a non-payment of any amount due under this Agreement that is not being disputed in good faith if the Breaching Party has not cured such breach by such date, or (ii) for other cases of breach, sixty (60) day period unless (a) the Breaching Party cures such breach during such sixty (60) day period, or (b) if such breach is not susceptible to cure within such sixty (60) day period, the Breaching Party has commenced and is diligently pursuing a cure (unless such breach, by its nature, is incurable, in which case the Agreement may not be terminated unless the Breaching Party fails to use its best commercially reasonable efforts to prevent a similar subsequent breach). The right of either Avalon or Athenex to terminate this Agreement as provided in this Section 8.2(c)(i) shall not be affected in any way by such Party's waiver or failure to take action with respect to any previous breach or default.

(ii) The other Party stops or suspends payment of all or a class of its debts, becomes insolvent or sells or parts with possession of the whole or a major part of its assets or major undertaking.

(iii) An application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken (other than frivolous or vexatious applications, proceedings, notice or steps) for the winding up or dissolution of the other Party or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

(iv) The Parties agree in writing to terminate this Agreement.

(d) **Termination of PolyU License.** Upon any termination of the PolyU License all licenses under Section 2.1 to the PolyU Technology and PolyU Patents shall immediately terminate.

**8.3 Effect of Expiration or Termination: Survival.**

(a) Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination, including all accrued payment obligations arising under Article 4 hereof. In addition to any other provisions of this Agreement which by their terms continue after the expiration of this Agreement, the provisions of Articles 3.3(h), 6, 7, 9 and 10 shall survive the expiration or termination of this Agreement and shall continue in effect after the date of expiration or termination for the longer of (i) five (5) years or (ii) the respective periods specified therein. Any expiration or early termination of this Agreement shall be without prejudice to the rights of any Party against the other accrued or accruing under this Agreement prior to termination. Except as expressly set forth herein, the rights to terminate as set forth herein shall be in addition to all other rights and remedies available under this Agreement, at law, or in equity, or otherwise.

(b) Payments of amounts owing to Avalon under this Agreement as of its expiration or termination shall be due and payable either (i) to the extent such amounts can be calculated and a fixed sum determined at the time of expiration or termination of this Agreement, thirty (30) days after the date of such expiration or termination, or (ii) to the extent such amounts cannot be calculated and a fixed sum determined at the time of expiration or termination of this Agreement, thirty (30) days after the date at which such amounts can be calculated and a fixed sum is mutually determined.

(c) Subject to the payment of all amounts required hereunder, Athenex and its Affiliates shall have the right to sell or otherwise dispose of the stock of any Licensed Product subject to this Agreement on hand or in process of manufacture as of the expiration or termination of this Agreement. Within thirty (30) days after the effective date of termination or expiration of this Agreement, Athenex shall notify Avalon of the amount of each Licensed Product Athenex and its Affiliates then have on hand or in the process of manufacture and shall have the right to sell in the Territory (except with respect to any country in the Territory in which any Licensed Product has been withdrawn or there is no Regulatory Approval), its remaining stock of Licensed Product until all of it is sold; *provided, however,* the terms and conditions of this Agreement shall apply to such Licensed Product so sold. Avalon hereby grants a non-exclusive license to Athenex as necessary to sell such Licensed Product in the Territory, subject to payment of all related amounts due under this Agreement. Any remaining quantities of Licensed Product not sold, at Athenex's election, may be (i) destroyed by Athenex at Athenex's cost, (ii) sold to Avalon at Athenex's procurement cost for such Licensed Product, or (iii) sold to customers in the Territory.

(d) Upon the termination or expiration of this Agreement, the following shall also be applicable: (i) at Avalon's request, Athenex shall promptly transfer and return to Avalon copies of all Data, reports, records and materials in Athenex's possession or control that relate to all Compounds or Licensed Products and return to Avalon all relevant records and materials in Athenex's possession or control containing Proprietary Information of Avalon (*provided that* Athenex may keep one copy of such Proprietary Information of Avalon for archival purposes only); (ii) Athenex shall transfer to Avalon ownership of any INDs, Regulatory Approvals, Drug Approval Applications and any other regulatory filings or submissions made or filed for any Licensed Product by Athenex or its designees; (iii) Avalon shall promptly return to Athenex all relevant records and materials in Avalon's possession or control containing Proprietary Information of Athenex (*provided that*, Avalon may keep one copy of such Proprietary Information of Athenex for archival purposes only); and (iv) all sublicenses between Athenex and Third Parties shall survive the termination or expiration of this Agreement and shall be assigned by Athenex to Avalon.

## ARTICLE 9 INDEMNIFICATION AND INSURANCE

**9.1 Indemnity.** For purposes of this Article 9, “**Avalon Indemnified Parties**” refers to Avalon, its Affiliates and the officers, directors, employees, shareholders, agents and successors and assigns of Avalon and its Affiliates, and “**Athenex Indemnified Parties**” refers to Athenex, its Affiliates and officers, directors, employees, shareholders, agents and successors and assigns of Athenex and its Affiliates.

**9.2 Athenex Indemnification.** Athenex shall defend the Avalon Indemnified Parties from and against all suits, claims, actions, demands, complaints, lawsuits or other proceedings, (collectively, “**Claims**”), that are brought by a Third Party, and shall indemnify and hold harmless to the fullest extent permitted by law the Avalon Indemnified Parties from and against

any and all Losses, that arise out of or are attributable to, (i) Athenex's negligence, recklessness or willful misconduct in exercising or performing any of its rights or obligations under this Agreement; or (ii) a material breach by Athenex of any of its obligations, representations, warranties or covenants under this Agreement within the Territory; *provided, however,* that Athenex shall not be obligated under this Section 9.2, to the extent it is shown by evidence acceptable in a court of law having jurisdiction over the subject matter and meeting the appropriate degree of proof for such Claim that the Claim arose out of the negligence or wrongdoing on the part of Avalon.

**9.3 Avalon Indemnification.** Avalon shall defend the Athenex Indemnified Parties from and against all Claims, in each case that are brought by a Third Party, and shall indemnify and hold harmless to the fullest extent permitted by law the Athenex Indemnified Parties from and against any and all Losses that arise out of such Claims that are attributable to, (i) Avalon's negligence, recklessness or willful misconduct in exercising or performing any of its rights or obligations under this Agreement; or (ii) a material breach by Avalon of any of its obligations, representations, warranties or covenants under this Agreement outside the Territory; *provided, however,* that Avalon shall not be obligated under this Section 9.3, to the extent it is shown by evidence acceptable in a court of law having jurisdiction over the subject matter and meeting the appropriate degree of proof for such Claim that the Claim arose out of the negligence or wrongdoing on the part of Athenex.

**9.4 Indemnification Procedure.**

(a) Each Party shall promptly notify the other Party in writing of any Claim. Concurrent with the provision of notice pursuant to this Section 9.4(a), the Indemnified Party shall provide to the other Party copies of any complaint, summons, subpoena or other court filings or correspondence related to such Claim and will give such other information with respect thereto as the other Party shall reasonably request. The Indemnifying Party and Indemnified Party shall meet to discuss how to respond to such Claim. Failure to provide prompt notice shall not relieve any Party of the duty to defend or indemnify unless such failure materially prejudices the defense of any matter. Each Party agrees that it will take reasonable steps to minimize the burdens of the litigation on witnesses and on the ongoing business of the Indemnified Parties including making reasonable accommodations to witnesses' schedules when possible and seeking appropriate protective orders limiting the duration and/or location of depositions.

(b) Should either Party dispute that any Claim or portion of a Claim ("Disputed Claim") of which it receives notice pursuant to Section 9.4(a), is an indemnified Claim, it shall so notify the other Party providing written notice in sufficient time to permit such other Party to retain counsel and timely appear, answer and/or move in any such action. In such event, such other Party shall defend against such Claim; *provided, however,* that such other Party shall not settle any Claim which it contends is an indemnified Claim without providing the Indemnifying Party ten (10) Business Days' notice prior to any such settlement and an opportunity to assume the defense and indemnification of such Claim pursuant to this Agreement. If it is determined that a Disputed Claim is subject to indemnification, the Indemnifying Party will reimburse the costs and expenses, including reasonable attorneys' fees, of the Indemnified Party.

**(c) Settlement of Indemnified Claims.** The Indemnifying Party under Sections 9.2 or 9.3, as applicable, shall have the sole authority to settle any Indemnified Claim without the consent of the other Party; *provided, however,* that an Indemnifying Party shall not, without the written consent of the other Party, as part of any settlement or compromise (i) admit to liability on the part of the other Party; (ii) agree to an injunction against the other Party; or (iii) settle any matter in a manner that separately apportions fault to the other Party. The Parties further agree that as part of the settlement of any Indemnified Claim, an Indemnifying Party shall obtain a full, complete and unconditional release from the claimant on behalf of the Indemnified Parties.

**9.5 Insurance.**

(a) Athenex shall maintain in the Territory, commencing as of the Effective Date, commercial general liability insurance (including coverage for product liability, contractual liability, bodily injury, property damage and personal injury), in form and substance reasonably satisfactory to Avalon and in accordance with reasonable industry standards, with minimum limits of \$5,000,000 per occurrence or, in case of Clinical Studies, \$5,000,000 per occurrence during the period when such Clinical Studies are being conducted (the “**Insurance**”). If such Insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The Insurance shall have retroactive date to or coinciding with the Effective Date. Notwithstanding the foregoing, Athenex may satisfy the foregoing obligation with respect to the Insurance through self-insurance.

(b) Such Insurance shall insure against all liability arising out of the manufacture, use, sale, distribution, or marketing of all Licensed Products in and for the Territory. During the Agreement Term, Athenex shall not permit such Insurance to be reduced, expired, materially amended or canceled during the period of the Insurance and/or the Agreement without reasonable prior written notice that shall be sent by registered mail to Avalon. Upon request Athenex shall provide certificates of insurance to Avalon evidencing the coverage specified herein.

(c) Except as expressly stated herein, a Party's liability to the other is in no way limited to the extent of the Party's insurance coverage.

(d) The Insurance shall contain an explicit clause, stating that each Party and its insurer waive their rights of subrogation against the other Party and its directors, employees and/or any one on its behalf with respect to the Insurance. Such waiver shall not apply in the event of a malicious act.

(e) The Insurance shall be primary to any other insurance maintained by each Party and each Party hereby waives any claim or demand as to participation in any such other insurance.

(f) The Insurance shall be valid in any location worldwide regarding the activities performed by each Party hereunder (including worldwide jurisdictions) for any destination or lawsuit which will be served against the other Party.

**9.6 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY SUCH OTHER PARTY OR ITS AFFILIATES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT. THE FOREGOING SENTENCE SHALL NOT LIMIT THE OBLIGATIONS OF EITHER PARTY TO INDEMNIFY THE OTHER PARTY FROM AND AGAINST THIRD PARTY CLAIMS UNDER THIS ARTICLE.

## ARTICLE 10 MISCELLANEOUS

**10.1 Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of the Agreement during the period of time when such failure or delay is caused by or results from events beyond the reasonable control of a Party, including fire, flood, earthquake, explosion, storm, blockage, embargo, war, acts of war (whether war be declared or not), terrorism, insurrection, riot, civil commotion, strike, lockout or other labor disturbance, failure of public utilities or common carriers, act of God or act, omission or delay in acting by any governmental authority or the other Party. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practicable.

**10.2 Assignment.** The Agreement may not be assigned or otherwise transferred without the prior written consent of the other Party; *provided, however,* that either Party may assign this Agreement to an Affiliate or in connection with the transfer or sale of its business or all of its assets or in the event of a merger, or consolidation upon prior written notice to the other Party only if the transferring Party warrants and ensures and the successor entity agrees to assume all (and not less than all) of the transferring Party's responsibilities and obligations under this Agreement. Notwithstanding, any assignment permitted under this Agreement shall not relieve the transferring Party of its responsibilities for performance of its obligations under this Agreement as a primary obligor. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties. Any assignment not in accordance with this Agreement shall be void.

**10.3 Severability.** In the event that any of the provisions contained in this Agreement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of the Parties. In such event, the Parties covenant and agree to renegotiate any such term, covenant or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the Parties that the basic purposes of this Agreement are to be effectuated.

**10.4 Notices.**

(a) Correspondence, reports, documentation, and any other communication in writing between the Parties in the course of ordinary implementation of this Agreement (but not including any notice required by this Agreement) shall be in writing and delivered by hand, sent by e-mail, or by overnight express mail (e.g., FedEx) to any one (1) representative designated by the Party which is to receive such written communication.

(b) Extraordinary notices and communications (including but not limited to notices of termination, force majeure, material breach, change of address, or any other notices required by this Agreement) shall be in writing and shall be deemed to have been given when delivered in person, or sent by overnight courier service (e.g., FedEx), postage prepaid, or by email or facsimile with confirmed receipt, or by prepaid registered or certified air mail letter, return receipt requested, to the following addresses of the Parties (or to such other address or addresses as may be specified from time to time in a written notice), and shall be deemed to have been properly served to the addressee upon receipt of such written communication, to the following addresses of the Parties:

if to Athenex to:

ATHENEX THERAPEUTICS LIMITED

Unit 608-613, IC Development Centre  
No. 6 Science Park West Avenue, Hong Kong Science Park  
Sha Tin, Hong Kong  
Attention: Teresa Bair, Vice President, Corporate Development & Legal Affairs  
Email: [tbair@athenex.com](mailto:tbair@athenex.com)  
Fax No.: +1-716-800-6816

if to Avalon to:

AVALON POLYTOM (HK) LIMITED

10/F, Fung House  
19-20 Connaught Road Central  
Hong Kong  
Attention: Eric Lau, Financial Controller  
Email: [ericlau@avalonbiomedical.com](mailto:ericlau@avalonbiomedical.com)  
Fax No.: +852 3706-5542

or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if personally delivered or sent by email facsimile on a Business Day, upon confirmed delivery by nationally-recognized overnight courier if so delivered, and on the third Business Day following the date of mailing if sent by registered or certified air mail.

**10.5 Specific Performance.** Each of the Parties acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in all material respects or otherwise are breached. Accordingly, and notwithstanding anything herein to the contrary, each of the Parties agrees that the other Party shall be entitled to seek injunctive relief to prevent breaches of the provisions of this Agreement, and/or to enforce specifically this Agreement and the terms and provisions hereof, in any action

instituted in any court or tribunal having jurisdiction over the Parties and the matter, without posting any bond or other security, and that such injunctive relief shall be in addition to any other remedies to which such Party may be entitled, at law or in equity. Any such action or proceeding shall be heard and determined in any court sitting in Singapore or other court of competent jurisdiction in the Territory, and the Parties hereto hereby irrevocably submit to the exclusive jurisdiction of such courts in any such action or proceeding and irrevocably waive any defense of any inconvenient forum or alternative forum to the maintenance of any such action or proceeding, including any decision by such court regarding the substantive issues involved in the underlying dispute.

**10.6 Further Assurances.** Each of the Parties shall take such further actions as shall be necessary or desirable in order to effectuate the respective rights and obligations hereunder.

**10.7 Applicable Law, Venue and Dispute Resolution.** This Agreement shall be governed by the laws of the State of New York. The United Nations Convention on Contracts for the International Sale of Goods shall not apply in any action, suit or proceeding arising out of or relating to this Agreement. Except as provide in Section 10.5, with regard to actions of specific performance, all disputes which arise in connection with this Agreement and its interpretation shall be settled in amicable way between the Parties. If the dispute cannot be settled in an amicable manner, it will be settled by arbitration to be held in Republic of Singapore in conformity with commercial arbitration rules of the International Chamber of Commerce. The award rendered by arbitration shall be final and binding upon the Parties hereto.

**10.8 Entire Agreement.** This Agreement, including the exhibits and schedules hereto, contains the entire understanding of the Parties with respect to the subject matter. All express or implied agreements and understandings, either oral or written, heretofore made, including any offering letters, letters of intent, or term sheets, are expressly superseded by this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by all Parties hereto.

**10.9 Independent Contractors.** It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.

**10.10 Waiver.** The waiver by a Party hereto of any right hereunder or the failure to perform or of a breach by another Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.

**10.11 Headings; References.** The captions to the several Articles and Sections hereof are not a part of the Agreement but are merely guides or labels to assist in locating and reading the several Articles and Sections hereof. Any reference in this Agreement to an Article, Exhibit, Schedule or Section shall, unless otherwise specifically provided, be to an Article, Exhibit, Schedule or Section of this Agreement. The words “**including**”, “**includes**” and “**such as**” are used in their non-limiting sense and have the same meaning as “**including without limitation**” and “**including but not limited to**. ” “**Hereunder**” and “**hereto**” means under or pursuant to any provision of this Agreement.

**10.12 Interpretation.** Both Parties have had the opportunity to have this Agreement reviewed by an attorney; therefore, neither this Agreement nor any provision hereof shall be construed against the drafter of this Agreement.

**10.13 Counterparts.** The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to the Agreement transmitted by fax, by email in “**portable document format**” (“pdf”) or by any other electronic means intended to preserve the original graphic and pictorial appearance of the Agreement shall have the same effect as physical delivery of the paper document bearing an original signature.

**10.14 No Third Party Beneficiaries.** Except as specifically set forth herein, none of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including any creditor of either Party hereto. No such Third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any claim in respect of any debt, liability or obligation (or otherwise) against either Party hereto.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first set forth above.

**ATHENEX THERAPEUTICS LIMITED**

By: \_\_\_\_\_  
Name: Johnson Lau Yiu Nam  
Title: Director

By: \_\_\_\_\_  
Name: Teresa Bair  
Title: Director

**AVALON POLYTOM (HK) LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE 1.8  
AVALON INTELLECTUAL PROPERTY

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SCHEDULE 1.57  
POLYU PATENTS

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FOIA CONFIDENTIAL TREATMENT REQUESTED  
Confidential Materials omitted and filed separate with the Securities and Exchange Commission  
Triple asterisks denote omissions

SCHEDULE 1.58  
POLYU TECHNOLOGY

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FOIA CONFIDENTIAL TREATMENT REQUESTED  
Confidential Materials omitted and filed separate with the Securities and Exchange Commission  
Triple asterisks denote omissions

SCHEDULE 3.1  
DATA

\*\*\*

**LICENSE AND SUPPLY AGREEMENT**

**by and between**

**ATHENEX THERAPEUTICS LIMITED**

**and**

**AVALON HEPAPOC LIMITED**

**GALACTOSE METER AND STRIP**

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**THIS LICENSE AGREEMENT** (this “**Agreement**”) is made and entered into as of June 29, 2018 (“**Effective Date**”), by and between ATHENEX THERAPEUTICS LIMITED, a company incorporated in Hong Kong having a registered address at Unit 608-613 IC Development Centre, No. 6 Science Park West Avenue, Hong Kong Science Park, Shatin, Hong Kong (“**Athenex**”) and AVALON HEPAPOC LIMITED, a company existing under the laws of Hong Kong and having a registered address at 10/F, Fung House, 19-20 Connaught Road Central, Hong Kong (“**Avalon**”).

**WITNESSETH:**

**WHEREAS**, Avalon owns or Controls the Avalon Intellectual Property;

**WHEREAS**, Athenex and its Affiliates have experience in the development, marketing, promotion and sale of pharmaceutical products;

**WHEREAS**, Avalon manufactures or causes to be manufactured a meter and consumable strips that can be used to detect galactose concentrations in human blood and Avalon has developed various intellectual property ancillary to the use of such meter and strips;

**WHEREAS**, Athenex desires to obtain the exclusive right to purchase the meter and strips and obtain a related license from Avalon to use and commercialize the meter and strips for administration of liver function tests to humans taking Athenex’s oncology drugs; and

**WHEREAS**, Avalon desires to exclusively sell to Athenex the meter and consumable strips and grant to Athenex such exclusive right and license for such purpose, all on the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Unless specifically set forth to the contrary herein, the following terms, whether used in the singular or plural, shall have the respective meanings set forth below:

1.1 “**Act**” means the United States Food, Drug, and Cosmetic Act of 1938, as amended, and the rules and regulations promulgated thereunder, or any successor act, as the same shall be in effect from time to time.

1.2 “**Affiliate**” means with respect to a Party: (a) any corporation or business entity of which more than fifty percent (50%) of the securities or other ownership interests representing the equity, the voting stock or general partnership interest are owned, controlled or held, directly or indirectly, by a Party; (b) any corporation or business entity which, directly or indirectly, owns, controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of a Party; (c) any corporation or business entity of which, directly or indirectly, an entity described in the immediately preceding subsection (b) controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of such corporation or entity; or (d) any corporation or business entity of which a Party has the right to acquire, directly or indirectly, more than fifty percent (50%) of the securities or other ownership interests representing the equity, voting stock or general partnership interest thereof. Avalon and Athenex are not Affiliates for purposes of this Agreement.

1.3 “**Agreement Term**” has the meaning set forth in Section 9.1.

1.4 “**Athenex Indemnified Parties**” has the meaning set forth in Section 10.1.

1.5 "**Athenex Know-How**" means all Know-How that is owned or Controlled by Athenex as of the Effective Date or that becomes owned or Controlled by Athenex during the Agreement Term.

1.6 "**Athenex Patent Rights**" means all Patent Rights that are owned or Controlled by Athenex as of the Effective Date or that become owned or Controlled by Athenex during the Agreement Term.

1.7 "**Avalon Indemnified Parties**" has the meaning set forth in Section 10.1.

1.8 "**Avalon Intellectual Property**" means the Avalon Patent Rights, Avalon Know-How and Intellectual Property with respect to Goods owned or Controlled by Avalon or any of its Affiliates as of the Effective Date or that becomes owned or Controlled by Avalon during the Agreement Term.  
"**Avalon Intellectual Property**" includes Improvements.

1.9 "**Avalon Know-How**" means all Know-How that is owned or Controlled by Avalon or any of its Affiliates as of the Effective Date or that becomes owned or Controlled by Avalon during the Agreement Term.

1.10 "**Avalon Patent Rights**" means all Patent Rights that are owned or Controlled by Avalon or any of its Affiliates or that become owned or Controlled by Avalon during the Agreement Term.

1.11 "**Basic Purchase Order Terms**" means, collectively, any one or more of the following terms specified by Athenex in a Purchase Order: (a) a list of the Goods to be purchased by specific product identifier (e.g. model or SKU number) to be determined between the Parties prior to commercial sale; (b) the quantity of each of the Goods ordered; (c) the Requested Delivery Date; (d) the billing address; and (e) the Delivery Location.

1.12 "**Breaching Party**" has the meaning set forth in Section 9.2(c).

1.13 "**Business Day**" means any calendar day, except that if an activity to be performed or an event to occur falls on a, Saturday, Sunday or a day which is recognized as a national holiday in the place of performance of an applicable activity or occurrence of an applicable event, then the activity may be performed or the event may occur on the next day that is not a Saturday, Sunday or nationally recognized holiday.

1.14 "**Calendar Quarter**" means for each Calendar Year, each of the three (3) month periods ending on March 31, June 30, September 30 and December 31; *provided, however,* that (i) the first Calendar Quarter of any period specified under this Agreement shall extend from the Effective Date until the end of the first complete Calendar Quarter thereafter (even if greater than 3 months); and (ii) the last Calendar Quarter shall end upon the expiration or termination of this Agreement.

1.15 "**Calendar Year**" means, for the first Calendar Year, the period commencing on the Effective Date and ending on December 31, 2018, and for each year thereafter, each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31.

1.16 "**Claims**" has the meaning set forth in Section 10.2.

1.17 "**Clinical Studies**" means any clinical studies of Goods conducted on humans.

1.18 "**Commercialize**" or "**Commercialization**" means promotion, marketing, sale, supply, import, export and distribution of Licensed Services, including any educational or pre-launch activities.

1.19 "**Commercially Reasonable Efforts**" means exerting such efforts and employing such resources as would normally be exerted or employed by a Party for the sale of goods and services.

1.20 "**Control**" means possession of the ability to grant the rights and licenses as provided for herein without violating the terms of any agreement or arrangement with any Third Party.

1.21 "**Copyright**" means the rights granted to an author or creator of an original work fixed in any tangible medium of expression, including without limitation, books, literary works, computer programs, and pictorial, graphic, dramatic and sculptured works, as well as derivative works and translations.

1.22 "**Data**" means any and all research data, pharmacology data, preclinical data, clinical data, adverse reaction data, chemistry, manufacturing and control ("CMC") data and/or all other similar documentation generated in connection with any Goods

1.23 "**Defective**" means not conforming to the Product Warranty under Section 4.9.

1.24 "**Defective Goods**" means goods shipped by Avalon to Athenex pursuant to this Agreement that are Defective.

1.25 "**Delivery Location**" means the address for delivery of the Goods specified in the applicable Purchase Order.

1.26 "**Disputed Claim**" has the meaning set forth in Section 10.4(b).

1.27 "**Dollar**" or "\$" means the lawful currency of the United States.

1.28 "**Effective Date**" has the meaning set forth in the Preamble hereof.

1.29 "**Field**" means the field of detecting levels of galactose in humans prior to and during the period of taking drugs for the treatment of cancer.

1.30 "**First Commercial Sale**" means, with respect to any Licensed Service, the first sale to a Third Party for end use or consumption of such Licensed Service in a country in the Territory by Athenex, its Affiliates or sublicensees after receipt of Regulatory Approval by

Avalon in such country or, where Regulatory Approval is not required, then the first sale for end use or consumption of a Licensed Service to a Third Party in that country in the Territory in connection with the nationwide introduction of such Licensed Service in that country in the Territory by Athenex, its Affiliates or sublicensees.

1.31 "**Forecast**" means, with respect to any twelve month period, a good faith projection or estimate of Athenex's requirements for Goods during each month during the period, which approximates, as nearly as possible, based on information available at the time to Athenex, the quantity of Goods that Athenex may order for each such month.

1.32 "**Goods**" means the meter and strips identified on Schedule 1.32 and described in the Specifications.

1.33 "**IFRS**" means International Financial Reporting Standards as adopted by the International Accounting Standard Board or the Generally Accepted Accounting Principles as adopted in the United States ("GAAP") will be consistently applied in each country based on the current accounting standards predominately utilized in such country. If a country does not utilize either GAAP or the international accounting standards, the international accounting standards shall be applied in such country.

1.34 "**Improvements**" means all inventions and Know-How, patentable or otherwise, made, created, developed, conceived or reduced to practice by or on behalf of a Party and/or any of its Affiliates pursuant to activities relating to or contemplated by this Agreement during the Agreement Term, that have application or relate to a Goods or a Licensed Service for use in the Field.

1.35 "**Insurance**" has the meaning set forth in Section 10.5(a).

1.36 "**Intellectual Property**" means Patent Rights, Know-How, Copyrights, and Trademarks collectively, including applications thereof, relating to the Goods(s) or Licensed Services, as well as any Improvements thereto.

1.37 "**Know-How**" means all proprietary information and technology, including trade secret information, developments, discoveries, methods, techniques, formulations, engineering, product design, Data, and other information, whether or not patentable, that relate to any Goods or any Licensed Service, or any Improvement.

1.38 "**Law(s)**" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the binding effect of law of any governmental authority.

1.39 "**Licensed Service(s)**" means testing for galactose levels in the Field using Goods (including, without limitation, the sale, leasing or other disposal of Goods for such purpose) in connection with drugs currently in development or that have been commercialized by Athenex and up to an additional three (3) drugs as agreed to by the Parties.

1.40 "**Liquidity Event**" means the sale or other disposition of all or substantially all of the assets of Avalon, or any consolidation or merger or change of control of Avalon with or into any other person.

1.41 "**Losses**" means any and all damages, awards, deficiencies, settlement amounts, defaults, assessments, fines, dues, penalties (including penalties imposed by any governmental authority), costs, fees, liabilities, obligations, taxes, liens, losses, lost profits and expenses (including court costs, interest and reasonable fees of attorneys, accountants and other experts) awarded or otherwise paid or payable to Third Parties.

1.42 “Net Sales” means the gross sales amount of Licensed Services invoiced to Third Parties by Athenex, its Affiliates and sublicensees, less the following deductions (to the extent included in such gross sales amount):

- (a) quantity and/or cash discounts therefor;
- (b) customs, duties, sales and similar taxes;
- (c) amounts allowed or credited by reason of rejections, return of goods (including as a result of recalls, market withdrawals and other corrective actions), and retroactive price reductions or allowances specifically identifiable as relating to a Licensed Service including allowances and credits related to inventory management or similar agreements with wholesalers;
- (d) amounts incurred resulting from government (or any agency thereof) mandated rebate programs in the Territory;
- (e) Third Party rebates, patient discount programs, administrative fees and chargebacks or similar price concessions related to the sale of a Licensed Service;
- (f) bad debt recognized for accounting purposes as not collectible;
- (g) the expenses for insurance, freight, packing, shipping and transportation;
- (h) commissions paid to agents or distributors to secure tender offers or other purchases by local authorities; and
- (i) as agreed by the Parties, such agreement not to be unreasonably withheld, any other specifically identifiable amounts included in a Licensed Service’s gross sales amount that were or ultimately will be credited and that are similar to those listed above, all in accordance with IFRS.

All such discounts, allowances, credits, rebates and other deductions shall be fairly and equitably allocated to a Licensed Service, and, to the extent applicable, other products or services of Athenex or its Affiliates or sublicensees such that the Licensed Services do not bear a disproportionate portion of such deductions. For the avoidance of doubt, Net Sales shall not include sales by Athenex to its Affiliates or sublicensees for resale; *provided that*, if Athenex sells Licensed Services to an Affiliate or sublicensee for resale, then the Net Sales calculation shall include the amounts invoiced by such Affiliate or sublicensee to Third Parties on the resale of such Licensed Services. For purposes of this Agreement, “**sale**” (including for purposes of the definition of First Commercial Sale) shall not include transfers or other distributions or dispositions of Licensed Services, at no charge, for regulatory purposes, clinical trials, samples, free products or in connection with patient assistance programs or other charitable or compassionate purposes or to physicians or hospitals for promotional purposes. Licensed Services shall be considered “**sold**” only when billed or invoiced.

1.43 “**Nonconforming Goods**” means any Goods received by Athenex from Avalon pursuant to a Purchase Order that: (a) do not conform to the model number listed in the applicable Purchase Order; (b) do not fully conform to the Specifications; or (c) materially exceed the quantity of Goods ordered by Athenex pursuant to this Agreement or any Purchase Order.

1.44 “**Party**” means Avalon or Athenex, as the context may require.

1.45 “**Patent Rights**” means any patents, patent applications, certificates of invention, or applications for certificates of invention and any supplemental protection certificates, together with any extensions, registrations, confirmations, reissues, substitutions, divisions, continuations or continuations-in-part, reexaminations or renewals thereof that relate to the

Goods, any Licensed Service or any Improvement, including methods of development, manufacture, formulation, preparation, presentation, means of delivery or administration, dosage, packaging, sale or use relating to the Goods, Licensed Service or Improvement.

1.46 "**Prime Rate**" means the rate announced from time to time by HSBC Bank, N.A. as its "**prime rate**" in New York, New York, USA which is the base rate upon which other rates charged at such bank are based and is the best rate available to premium customers at such bank.

1.47 "**Product Label(ing)**" shall have the same meaning as defined in the Act and as interpreted by the Regulatory Authority in each country in the Territory.

1.48 "**Proprietary Information**" means any and all scientific, clinical, technological, regulatory, marketing, financial and commercial information or data, whether communicated in writing, orally or by any other means, which is owned and under the protection of one Party and is provided by that Party to the other Party in connection with this Agreement, and shall include Avalon Know-How and Athenex Know-How, as applicable.

1.49 "**Regulatory Approval**" means approval by the relevant Regulatory Authority of health registration, common technical document, regulatory submission, notice of compliance and any other license or permit required to be approved for the supply, manufacture, use, storage, distribution, import, export, transport, promotion, marketing and sale of Goods in a country, region or other regulatory jurisdiction.

1.50 "**Regulatory Authority**" means any governmental authority in a country, region or other regulatory jurisdiction that regulates the supply, manufacture, use, storage, distribution, import, export, transport, promotion, marketing and sale of Goods.

1.51 "**Requested Delivery Date**" means the requested delivery date for Goods ordered hereunder that is set forth in a Purchase Order, which must be a Business Day no less than 45 days following delivery of the applicable Purchase Order to Avalon.

1.52 "**SEC**" means the United States Securities and Exchange Commission and any successor agency having substantially the same functions.

1.53 "**Specifications**" means the specifications for the Goods attached hereto as Schedule 1.53 and as amended from time to time subject to Avalon's decision.

1.54 "**Territory**" means worldwide.

1.55 "**Third Party(ies)**" means a person or entity who or which is neither a Party nor an Affiliate of a Party.

1.56 "**Trademark**" means all trademark(s) for which Avalon has sought or obtained a registration and all related service marks, domain names and other trademark related rights relating to the Goods.

## **ARTICLE 2** **GRANT OF RIGHTS**

**2.1 Grants by Avalon.** Subject to the terms and conditions of this Agreement, Avalon hereby grants to Athenex an exclusive right and license throughout the Territory (including the right to grant sublicenses to Third Parties located within the Territory with prior written notice to Avalon) to (a) resell, lease, use or otherwise provide or dispose of the Goods to Third Parties solely in connection with Licensed Services in the Field; (b) practice under the Avalon Intellectual Property in order to promote, distribute, use, sell, offer for sale, provide, perform, commercialize and otherwise exploit the Licensed Services in the Field; and (c) to use the Trademark in connection with the exercise of its rights under (a); *provided, however,* that, notwithstanding the exclusive rights granted herein Avalon shall retain the right to use the Avalon Intellectual Property in the Field solely as necessary to perform its obligations under this Agreement.

**2.2 Retained Rights; No Implied Licenses.** All rights not specifically granted to Athenex under this Agreement are reserved and retained by Avalon. Nothing in this Agreement shall be deemed to constitute the grant of any license or other right to Athenex, to or in respect of any product, patent, trademark, Proprietary Information, trade secret or other data or any other intellectual property of the other Party, except as set forth under this Agreement. Avalon retains the right to manufacture and sell Goods outside the Field. For the avoidance of doubt, Avalon shall not manufacture, market, distribute, sell, import or license Goods or the Licensed Services within the Field.

**2.3 Patents.** Upon execution of this Agreement, Avalon shall procure the required Patent Rights related to the Goods in connection with Licensed Service in the Field.

**ARTICLE 3**  
**INFORMATION TRANSFER; DEVELOPMENT AND**  
**COMMERCIALIZATION; REGULATORY MATTERS**

**3.1 Information and Transfer of Avalon Intellectual Property.** As soon as practicable, but in no event later than thirty (30) days after the Effective Date, Avalon shall disclose and deliver to Athenex electronic copies in the English language (or, upon Athenex's request, copy of the originals) of all Data included in the Avalon Intellectual Property licensed to Athenex hereunder or necessary for the provision of Licensed Services. In addition to the foregoing, Avalon shall provide Athenex with such assistance as Athenex may reasonably request (at Athenex's cost and expenses) in connection with the foregoing disclosures, including making available at their place of employment (or such other location as the Parties may mutually agree upon) the assistance of such persons knowledgeable of the Goods and the Avalon Intellectual Property.

**3.2 Ongoing Disclosure.** At least twice in each Calendar Year, Avalon shall disclose and deliver to Athenex electronic copies in the English language (or, upon Athenex's request, copies of the originals) all discoveries and developments related to the Goods, new Data, and the Avalon Intellectual Property as necessary for continued provision of Licensed Services, including the use of the Goods.

**3.3 Regulatory Matters.** From and after the Effective Date:

(a) Avalon shall have sole authority and responsibility to obtain all Regulatory Approvals and for the timely preparation, filing and prosecution of all filings, submissions, authorizations or approvals with Regulatory Authorities, and shall own and control all such filings, submissions, authorizations and approvals in the Territory, in accordance with reasonable industry standards; provided, however, that upon request by Athenex, Avalon shall allow Athenex to reasonably participate in Avalon seeking such Regulatory Approvals.. Avalon shall provide copies of all such filings, submissions, authorizations and approvals upon reasonable request from Athenex, at Athenex's sole cost and expense.

(b) Avalon shall be the primary contact with each Regulatory Authority in the Territory and shall be solely responsible for all communications with each Regulatory Authority that relate to any Regulatory Approvals in the Territory, *provided, however,* that upon the reasonable request of Avalon, Athenex shall provide appropriate personnel to participate in discussions with a Regulatory Authority regarding the regulatory review process and shall assist and consult with Avalon in applying for Regulatory Approval at Avalon's cost and expense.

(c) From and after receipt of each Regulatory Approval, Avalon shall have exclusive authority and responsibility to submit all reports or amendments necessary to maintain Regulatory Approvals and to seek revisions of the conditions of each such Regulatory Approval in the Territory and shall keep Athenex informed of any such actions. Avalon shall have sole authority and responsibility to seek and/or obtain any necessary approvals for any Product Label, package inserts, monographs and packaging used in connection with a Licensed Service, in addition to promotional materials used in connection with the use or sale of Goods in the Territory. Avalon shall determine whether the foregoing items require Regulatory Approval in the Territory.

(d) **Clinical Studies.** Avalon will, either directly or through its Affiliates or sublicensees, conduct and administer all the Clinical Studies with respect to the Goods. The Data and results of any Clinical Studies or other studies conducted by Avalon or its partners shall be made available to Athenex for referencing at no cost.

(e) **Records.** Under this Agreement, Avalon shall maintain records, in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes and in accordance with good industry practice, which shall be complete and accurate in all material respects and shall fully and properly reflect all work done and results achieved, including all Know-How and including individual case report forms, in the form required by applicable Laws. Athenex shall have the right, upon at least sixty (60) days prior written notice to Avalon and no more than once in any Calendar Year, to inspect and audit such records. Athenex shall reimburse Avalon for any costs incurred by Avalon with respect to any such inspection and audit by Athenex.

(f) Athenex shall obtain all required licenses and permits for sales and distribution or Licensed Services and Products, including for the import and export of Goods.

(g) Athenex will, upon request from Avalon, provide reasonable feedback required to help Avalon fulfill its regulatory obligations with respect to Goods.

**3.4 Promotional Materials and Activities.** Athenex shall create and develop the advertising and promotional materials for the Goods in the Territory with the written approval of Avalon if Athenex uses a Trademark in connection with the same (which shall not be unreasonably withheld) with respect to all such materials. As holder of the Regulatory Approvals in the Territory, Avalon shall be responsible for all submissions and interactions with the Regulatory Authorities regarding approval of all Goods-related promotional materials that require Regulatory Approval.

**3.5 Ownership and Use of Copyrights and Trademarks.** Avalon retains all rights to establish a global brand for the Goods and shall own all Copyrights and Trademarks for Goods in the Territory with respect to such global branding strategy. Athenex shall have the right to use the Avalon Trademarks and Copyrights with respect to the Goods and Licensed Services upon Avalon's prior written consent, which shall not be unreasonably withheld or delayed.

**3.6 Sales of Licensed Services.** All sales of Licensed Services shall be made, recorded, invoiced and collected by Athenex or its Affiliates or sublicensees. All terms regarding Licensed Service sales, including terms with respect to credit, pricing, cash discounts, rebates, chargebacks, bad debt write-offs, and other fees and charges, and returns and allowances shall be set solely by Athenex in accordance with reasonable industry standards.

#### ARTICLE 4 SUPPLY OF GOODS

**4.1 Purchase and Sale of Goods.** Subject to the terms and conditions of this Agreement, during the Term, Athenex shall purchase from Avalon, and Avalon shall manufacture or have manufactured and sell exclusively to Athenex, Athenex's requirements of the Goods. Athenex and its Affiliates may only use, sell, offer, lease or otherwise dispose of the Goods for Licensed Services. Avalon may not sell the Goods to any Person other than Athenex for use within the Field or to perform Licensed Services within the Field.

**4.2 Terms of Agreement Prevail Over Athenex's Purchase Order.** The Parties intend for the express terms and conditions contained in this Agreement (including any Schedules and Exhibits hereto) exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Agreement, and, therefore, additional, contrary or different terms contained in any purchase order, invoice or other request or communication pertaining to the sale of Goods, will not modify this Agreement or be binding on the Parties unless there is an amendment or waiver that complies with Sections 11.8 or 11.10.

**4.3 Most Favored Customer.** Notwithstanding anything in this Agreement to the contrary, if any term or condition set forth in this Agreement is less favorable to Athenex than an analogous term or condition offered by Avalon to any of its other customers of goods (an "**Alternative Term**"), such term or condition of this Agreement shall automatically be deemed amended to adopt the Alternative Term, *mutatis mutandis*, retroactive to the date Avalon first offered or became bound to the Alternative Term. Avalon shall promptly notify Athenex in writing in the event an Alternative Term would be more favorable to Athenex than the analogous term or condition of this Agreement.

**4.4 Ordering Procedure.**

**(a) Non-binding Forecasts of Athenex's Requirements.** Within 60 days following Regulatory Approval in a jurisdiction and Athenex's confirmation that it intends to provide Licensed Services in such Territory, Athenex and Avalon shall agree on appropriate Forecasts for such jurisdiction. No later than 30 days prior to the first day of each subsequent calendar quarter, Athenex shall deliver to Avalon a Forecast for the period beginning with the first day of such calendar quarter. Forecasts are for informational purposes only and do not create any binding obligations on behalf of either Party.

**(b) Purchase Orders.** Athenex shall issue to Avalon Purchase Orders (containing applicable Basic Purchase Order Terms that are consistent with the terms of this Agreement), in written form via e-mail. By issuing a Purchase Order to Avalon, Athenex makes an offer to purchase Goods pursuant to the terms and conditions of this Agreement and the Basic Purchase Order Terms contained in such Purchase Order, and on no other terms. For the avoidance of doubt, any variations made to the terms and conditions of this Agreement by Athenex in any Purchase Order are void and have no effect.

**(c) Acceptance and Rejection of Purchase Orders.** Avalon accepts a Purchase Order by confirming the order in writing, by delivering the applicable Goods to Athenex or by failing to reject a Purchase Order within ten (10) days after receipt of the same (which is deemed acceptance), whichever occurs first. Avalon may reject a Purchase Order without liability or penalty if it does so within ten (10) days after receipt of the same.

**4.5 Shipment, Delivery, Acceptance and Inspection.**

**(a) Shipment.** Unless otherwise expressly agreed to by the Parties in writing, Avalon shall select the method of shipment of and the carrier for the Goods. Avalon may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Athenex as long as it completes each entire shipment by the due date. Each shipment will constitute a separate sale and Athenex shall pay for the Goods shipped, in accordance with the payment terms specified in Section 4.6, whether such shipment is in whole or partial fulfillment of a Purchase Order.

**(b) Packaging and Labeling.** Avalon shall properly pack, mark and ship Goods and provide Athenex with shipment documentation showing the Purchase Order number, Avalon's identification number for the subject Goods, the quantity of pieces in shipment, the number of cartons or containers in shipment, Avalon's name, the bill of lading number and the country of origin.

**(c) Delivery.** Unless otherwise expressly agreed to by the Parties in writing, Avalon shall deliver the Goods to the Delivery Location, using Avalon's standard methods for packaging and shipping such Goods.

**(d) Late Delivery.** Any time quoted for delivery is an estimate only; provided, however, that Avalon shall use commercially reasonable efforts to deliver all Goods on or before the Requested Delivery Date. If Avalon has delayed shipment of all or any Goods for more than 30 days after the Requested Delivery Date and if such delay is not due to any action or inaction of Athenex or otherwise excused in accordance with the terms and conditions of this Agreement, Athenex may cancel the portion of the related Purchase Order covering the delayed Goods by giving Avalon written Notice within 45 days of the Requested Delivery Date.

**(e) Transfer of Title and Risk of Loss.** Title to Goods and risk of loss of Goods shipped under any Purchase Order passes to Athenex upon receipt by Athenex / payment of the Price for such Goods by Athenex at the shipping location.

**(f) Inspection.** Athenex shall inspect Goods received under this Agreement within 30 days of receipt of such Goods (“**Inspection Period**”) and either accept or, only if any such Goods are Nonconforming Goods, reject such Goods. Athenex will be deemed to have accepted Goods unless it provides Avalon with written Notice of any Nonconforming Goods within 30 days following the Inspection Period, stating with specificity all defects and nonconformities, and furnishing such other written evidence or other documentation as may be reasonably required by Avalon (including the subject Goods, or a representative sample thereof, which Athenex contends are Nonconforming Goods). All defects and nonconformities that are not so specified will be deemed waived by Athenex, such Goods shall be deemed to have been accepted by Athenex, and no attempted revocation of acceptance will be effective. If Athenex timely notifies Avalon of any Nonconforming Goods, Avalon shall determine, in its reasonable discretion, whether the Goods are Nonconforming Goods. If Avalon determines that such Goods are Nonconforming Goods, Avalon shall, in its sole discretion, either: (i) replace such Nonconforming Goods with conforming Goods; or (ii) refund to Athenex such amount paid by Athenex to Avalon for such Nonconforming Goods returned by Athenex to Avalon and the respective shipping costs. Athenex shall ship, at Athenex’s expense and

risk of loss, all Nonconforming Goods to Avalon's designated facility located at No. 7, Li-Hsin 5th Rd. Hsinchu Science Park, Hsinchu City 30078, Taiwan or to such other location as Avalon may instruct Athenex in writing. If Avalon exercises its option to replace Nonconforming Goods, Avalon shall ship to the Delivery Location, at Avalon's expense and risk of loss, the replacement Goods.

**(g) Limited Right of Return and Rejection.** Except as expressly provided in this Agreement, Athenex has no right to return or reject Goods shipped to Athenex pursuant to this Agreement.

**4.6 Price and Payment.**

**(a) Price.** Athenex shall purchase the Goods from Avalon at 110% of Avalon's documented and verified cost that Avalon is invoiced by the third-party manufacturing such products for Avalon ("Prices").

**(b) Audit.** Upon the written request of Athenex, Avalon shall permit an independent certified public accounting firm of recognized standing, selected by Athenex and acceptable by Avalon (*provided that* such accounting firm shall not be retained or compensated on a contingency basis and shall have entered into a confidentiality agreement with Athenex in form and substance reasonably satisfactory to Avalon), to have access not more than once in any Calendar Year, during normal business hours, to such of the records of Avalon as may be reasonably necessary to verify the accuracy of the Prices for any year ending not more than twenty four (24) months prior to the date of such request. The accounting firm shall disclose to Athenex whether the Prices are correct or incorrect, the specific details concerning any discrepancies. If such accounting firm concludes that the Prices were too high, and Avalon agrees with such

conclusion, then Avalon shall pay the amount overpaid by Athenex to Athenex, together with interest at the Prime Rate on the amount of such additional payments, within thirty (30) days of the date Athenex delivers the Audit Report to Avalon. In the event that Avalon disagrees with the accounting firm's conclusion, Avalon shall not have the obligation to make any additional payments to Athenex until there is a mutual agreement of the Parties regarding the amount owed by Avalon. For the avoidance of doubt, Avalon is not obligated to pay any interest for the period during which the Parties were in dispute of the accounting firm's conclusion and amount owed thereunder. The fees charged by such accounting firm shall be paid by Athenex, *provided, however,* that if the report shows that Athenex overpaid Avalon by more than five percent (5%) of the payments due hereunder for the period being reviewed is discovered, then the reasonable fees and expenses of the accounting firm shall be paid by Avalon.

**(c) Binding Calculation.** Upon the expiration of twenty four (24) months following the end of any year for which Avalon has made payment with respect to such year, and in the absence of a contrary finding by an accounting firm pursuant to this section, such calculation shall be binding and conclusive upon Avalon or Athenex, and Avalon shall be released from any liability or accountability with respect to Prices for such period.

**(d) Shipping Charges, Insurance and Taxes.** Athenex shall pay for all shipping charges and insurance costs. In addition, all Prices are exclusive of, and Athenex is solely responsible for, and shall pay all Taxes, with respect to, or measured by, the manufacture, sale, shipment, use or Price of the Goods (including interest and penalties thereon); provided, however, that Athenex shall not be responsible for any Taxes imposed on, or with respect to, Avalon's income, revenues, gross receipts, Personnel or real or personal property or other assets.

**4.7 Restrictions on Sales or Delivery other than for Licensed Services.** Neither Athenex nor any Athenex personnel or Representatives shall sell or offer to sell any of the Goods or any other products incorporating any of the Goods other than for Licensed Services, unless such sales are made with the prior written consent of Avalon (which consent may be withheld or withdrawn for any or no reason).

**4.8 Supply Arrangements.** The Parties understand that the covenants related to the supply of Goods set forth in this Agreement are based on the parties current understanding of the likely commercialization of the Goods and Licensed Services. Therefore, closer to actual commercialization of Licensed Services, a Party may request another to discuss in good faith making amendments to the supply terms of this Agreement to reflect any changed circumstances though neither Party will be obligated to make any such amendments.

**4.9 Limited Product Warranty.** Subject to Section 4.10, Avalon warrants to Athenex (the “**Product Warranty**”) that:

(a) for a period of 12 months from the date of shipment of a Good (the “**Warranty Period**”), each Good will materially conform to the Specifications and will be free from significant defects in material and workmanship; and

(b) Athenex will receive good and valid title to all Goods, free and clear of all encumbrances and liens of any kind.

**4.10 Product Warranty Limitations.** The Product Warranty does not apply to any Good that:

(a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Avalon;

(b) has been reconstructed, repaired or altered by Persons other than Avalon or its authorized Representative; or

(c) has been used with any third-party products, hardware or product that has not been previously approved in writing by Avalon.

**4.11 Athenex's Exclusive Remedy for Defective Goods.** This Section 4.11 contains Athenex's exclusive remedy for Defective Goods. During the Warranty Period, with respect to any allegedly Defective Goods:

(a) Athenex shall notify Avalon, in writing, of any alleged claim or defect within 14 days from the date Athenex discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period);

(b) Athenex shall ship, at Avalon's expense and risk of loss, such allegedly Defective Goods to Avalon's designated facility located at No. 7, Li-Hsin 5th Rd. Hsinchu Science Park, Hsinchu City 30078, Taiwan or to such other location as Avalon may instruct Athenex in writing for inspection and testing by Avalon;

(c) Avalon will provide Athenex the results of Avalon's inspection and testing. If the inspection and testing reveals that such Goods are Defective, and any such defect has not been caused or contributed to by any of the factors described under Section 4.10, Avalon shall at its expense, repair or replace such Defective Goods. If Avalon

believes that the inspection and testing reveals that such Goods are not Defective or that any such defect has been caused or contributed to by any of the factors described under Section 4.9, and Athenex disagrees and provided notice to Avalon within 10 business days after receipt of Avalon's determination, the Parties will attempt to resolve the disagreement, acting reasonably, for up to 30 days after Athenex delivers its objection notice. If the parties cannot agree within such period, they shall appoint a third-party skilled in the testing of products like the Goods and such third-party's determination shall be final and binding on the parties; and

(d) Avalon shall ship to Athenex, at Avalon's expense and risk of loss, the repaired or replaced Goods to the Delivery Location.

**4.12 DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES; NON-RELIANCE.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, (A) NEITHER AVALON NOR ANY PERSON ON AVALON'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) ATHENEX ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY AVALON, OR ANY OTHER PERSON ON AVALON'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT.

**ARTICLE 5**  
**PAYMENTS AND STATEMENTS**

**5.1 Upfront Fee.** Upon execution of this Agreement, Athenex shall pay to Avalon US \$500,000 in immediately available funds.

**5.2 Milestone Payments.**

(a) Athenex will pay the following amounts to Avalon upon occurrence (if ever) of the following events:

(i) US \$\*\*\* within thirty (30) days following the receipt by Avalon of all Regulatory Approvals necessary to sell the Goods in Taiwan for use in the Field;

(ii) US \$\*\*\* within thirty (30) days following the receipt by Avalon of all Regulatory Approvals necessary to sell the Goods in United States for use in the Field;

(iii) US \$\*\*\* within thirty (30) days following the receipt by Avalon of all Regulatory Approvals necessary to sell the Goods in the European Union for use in the Field;

(iv) US \$\*\*\* within thirty (30) days following the receipt by Avalon of all Regulatory Approvals necessary to use the Goods in the People's Republic of China (which for clarity excludes Hong Kong, Taiwan and Macau) for use in the Field;

(v) US \$\*\*\* within thirty (30) days following the First Commercial Sale of Licensed Services in the United States by Athenex; and

(vi) US \$\*\*\* within thirty (30) days following the First Commercial Sale of Licensed Services in the European Union by Athenex; and

(vii) US \$\*\*\* within thirty (30) days following the First Commercial Sale of Licensed Services in the People's Republic of China (which for clarity excludes Hong Kong, Taiwan and Macau) by Athenex.

### 5.3 Royalties.

(a) During each Calendar Quarter during the Agreement Term that royalties are payable by Athenex, Athenex shall, pursuant to Section 5.4(a), pay to Avalon a royalty of \*\*\* percent (\*\*\*%) on annual (Calendar Year) aggregate Net Sales of Licensed Services by Athenex and its Affiliates (annual Net Sales is the aggregated total of all sales in the Territory) ("Athenex Royalties").

(b) During each Calendar Quarter during the Agreement Term that royalties are payable by Athenex, Athenex shall, pursuant to Section 5.4(a), pay to Avalon Thirty Percent (30%) of all upfront payments, milestone payments and royalties paid by the sublicensees to Athenex ("Sublicensee Royalties").

### 5.4 Royalty Reports and Payments.

(a) **Royalty Payments.** Within sixty (60) days following the end of each Calendar Quarter during the Royalty Term, Athenex shall submit to Avalon an accounting report for such applicable Calendar Quarter for each relevant country within the Territory, which sets forth the gross sales, Net Sales and the Athenex Royalties and Sublicensee Royalties payable by Athenex to Avalon for such Calendar Quarter, with a breakdown of all deductions taken in any such calculations, in accordance with the definition of "Net Sales". Any conversion to Dollars shall be calculated in accordance with Section 5.5(c).

**(b) Reports.** Athenex shall also furnish Avalon a written report for each Licensed Service in each relevant country within the Territory during the first four (4) Calendar Quarters commencing after the termination of the royalty obligations for such Licensed Service in that country stating the basis for Net Sales then being free of royalty obligations hereunder. Athenex shall thereafter have no further obligation to include in any written reports the Net Sales of such Licensed Service in such country for purposes of the royalty calculation for any Calendar Quarter. This obligation shall survive the termination or expiration of this Agreement in any such country.

**(c) Records.** Each Party shall keep and require its Affiliates and sublicensees to keep complete and accurate records in sufficient detail to permit accurate determination of all amounts necessary for calculation and verification of all payment obligations set forth in this Article 5 for a period of thirty-six (36) months from the end of the relevant Calendar Quarter.

**5.5 General Payment Provisions.**

**(a) Payment Method.** Except as contemplated by Section 5.5(c), all payments under this Agreement shall be made in Dollars by bank wire transfer in immediately available funds to an account designated by Avalon.

**(b) Withholding Taxes.** Athenex may deduct the amount of any taxes imposed on Avalon which are required to be withheld or collected by Athenex, its Affiliates or sublicensees under the laws, rules or regulations of any country on amounts owing from Athenex to Avalon hereunder. Any such taxes required to be withheld or collected shall be an expense of Avalon. To the extent Athenex, its Affiliates or sublicensees pay such withholding taxes to the appropriate governmental authority on

behalf of Avalon; Athenex shall promptly deliver to Avalon proof of payment of such taxes. The Parties will cooperate with respect to all documentation required by any taxing authority or reasonably requested by either party to secure a reduction in the rate of, or the elimination of, applicable withholding taxes, and shall otherwise cooperate to reduce the rate of, or eliminate, applicable withholding taxes.

(c) **Currency Exchange.** For purposes of computing royalties on Net Sales in any country outside the United States, the Net Sales shall be converted to Dollars using the year-to-date average rate of exchange for Dollars used by Athenex for its internal financial accounting purposes; *provided, however,* that if for any reason conversion into Dollars cannot be made in a country in the Territory, then notwithstanding the provisions of Section 5.5(a), payment may be made in the currency of such country by deposit in the name of Avalon in a bank account designated by it in such country.

(d) **Financial Accounting Standards.** Except as otherwise defined herein, all financial calculations by either Party under this Agreement shall be calculated in accordance with IFRS. In addition, all calculations shall give pro rata effect to and shall proportionally adjust (by giving effect to the number of applicable days in such Calendar Quarter) (i) for any Calendar Quarter that is shorter than a standard Calendar Quarter or any Calendar Year that is shorter than four (4) consecutive full Calendar Quarters, or (ii) as a result of a determination, in accordance with the terms of this Agreement, that the first or last day of such Calendar Quarter (including as a result of termination of this Agreement) shall be deemed other than the actual first or last day of such Calendar Quarter, or that the first or last day of such Calendar Year shall be deemed other than the actual first or last day of such Calendar Year.

**5.6 Audits.**

(a) Upon the written request of Avalon, Athenex shall permit an independent certified public accounting firm of recognized standing, selected by Avalon and acceptable by Athenex (*provided that* such accounting firm shall not be retained or compensated on a contingency basis and shall have entered into a confidentiality agreement with Avalon in form and substance reasonably satisfactory to Athenex), to have access not more than once in any Calendar Year, during normal business hours, to such of the records of Athenex as may be reasonably necessary to verify the accuracy of the reports under Section 5.4 hereof for any year ending not more than twenty four (24) months prior to the date of such request. The accounting firm shall disclose to Avalon whether the reports are correct or incorrect, the specific details concerning any discrepancies (including the accuracy of the calculation of Net Sales and the resulting effect of such calculations on the amounts payable by Athenex under this Agreement) and such other information that should properly be contained in a report required under this Agreement (the “**Audit Report**”).

(i) If such accounting firm concludes that additional amounts were owed during such year, and Athenex agrees with such conclusion, then Athenex shall pay the additional payments, together with interest at the Prime Rate on the amount of such additional payments, within thirty (30) days of the date Avalon delivers the Audit Report to Athenex. In the event that Athenex disagrees with the accounting firm’s conclusion, Athenex shall not have the obligation to make any additional payments to Avalon until there is a mutual agreement of the Parties regarding the amount owed by Athenex. For the avoidance of doubt, Athenex is

not obligated to pay any interest for the period during which the Parties were in dispute of the accounting firm's conclusion and amount owed thereunder. In the event such accounting firm concludes that amounts were overpaid by Athenex during such period, Avalon shall repay Athenex the amount of such overpayment, together with interest at the Prime Rate on the amount of such overpayment, within thirty (30) days of the date the auditing Party delivers to the audited Party such accounting firm's Audit Report. The fees charged by such accounting firm shall be paid by Avalon, *provided, however,* that if the report shows that Athenex underpaid Avalon by more than five percent (5%) of the payments due hereunder for the period being reviewed is discovered, then the reasonable fees and expenses of the accounting firm shall be paid by Athenex.

(ii) Upon the expiration of twenty four (24) months following the end of any year for which Athenex has made payment with respect to such year, and in the absence of a contrary finding by an accounting firm pursuant to Section 5.6(a), such calculation shall be binding and conclusive upon Athenex or Avalon, and Athenex shall be released from any liability or accountability with respect to royalties or other payments for such year.

## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES; COVENANTS

**6.1 General Representations.** Each Party hereby represents and warrants to the other Party as follows:

(a) Such Party is a corporation or limited liability company duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation or formation, is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification and failure to have such would prevent it from performing its obligations under this Agreement;

(b) The execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary corporate action and do not and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it or any provision of its charter or bylaws; or (ii) conflict with or constitute a default under any other agreement to which such Party is a party;

(c) This Agreement has been duly executed and is a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms and conditions hereof, except as enforceability may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditor's rights generally, or (ii) general principles of equity, whether considered in a proceeding in equity or at law;

(d) Such Party is not under any obligation to any person or entity, contractual or otherwise, that is in conflict with the terms of this Agreement, nor shall such Party undertake any such obligation during the Agreement Term;

(e) Such Party has obtained all authorizations, licenses, permits, consents and approvals, governmental or otherwise, necessary for the execution and delivery of this Agreement, and to otherwise perform such Party's obligations under this Agreement;

(f) Neither Party, nor any of its Affiliates, are a party to, or are otherwise bound by, any oral or written agreement that will result in any person or entity obtaining any interest in, or that would give to any Third Party any right to assert any claim in or with respect to, any of such Party's or the other Party's rights under this Agreement; and

(g) Such Party shall perform its obligations hereunder in accordance with all applicable Laws.

**6.2 Additional Representations and Warranties of Avalon.** Avalon represents and warrants to Athenex that:

(a) As of the Effective Date in the Territory, (i) to Avalon's best knowledge, there is no Third Party infringement of any of the Avalon Intellectual Property; (ii) the Avalon Intellectual Property is in full force and effect where filed; (iii) the Avalon Patent Rights where filed are not subject to any pending or threatened re-examination, re-issue, opposition, interference, challenge, litigation proceeding or other claim; and (iv) in those countries in the Territory where Avalon has not filed or prosecuted any patent applications with respect to the Avalon Intellectual Property, Avalon shall cause and ensure that Athenex is granted Data exclusivity under this Agreement in all such countries and shall perform all necessary requirements in connection therewith.

(b) Avalon has not committed any act, or omitted to commit any act, that may cause the Avalon Patent Rights where filed to expire prematurely or be declared invalid or unenforceable, or that stops Avalon from enforcing the Avalon Patent Rights where filed against any Third Party;

(c) As of the Effective Date in the Territory, (i) Avalon has the sole right to use, disclose and enable Athenex to use and disclose (in each case under appropriate conditions of confidentiality) the Avalon Know-How; and (ii) the Avalon Intellectual Properly is not subject to any encumbrance, lien, license or claim of ownership by any Third Party;

- (d) At no time during the Agreement Term shall Avalon assign, transfer, encumber, dispose of, or grant rights in, or with respect to, the Avalon Intellectual Property in a manner that is inconsistent with the rights granted to Athenex under this Agreement;
- (e) At no time during the Agreement Term shall Avalon, without Athenex's prior written consent, enter into any other agreements regarding the Avalon Intellectual Property, any Goods or any Licensed Service for the Field within the Territory;
- (f) The Data and information provided to Athenex or its Affiliates prior to the Effective Date relating to the Goods has been accurate in all respects and Avalon has made no misrepresentation or omission in connection with such Data and information. Avalon has also provided Athenex or its Affiliates with access to complete summaries of all adverse events known to Avalon relating to any Goods; and
- (g) The Goods do not infringe the intellectual property rights of any third-party.

## ARTICLE 7 PATENT MATTERS

### **7.1 Ownership of Inventions.**

- (a) Except as otherwise provided in and subject to the terms of this Agreement, as between the Parties:

(i) Avalon or its licensors shall have and retain all right, title and interest in or Control over, as applicable, all Avalon Intellectual Property (and Patent Rights arising thereunder) (i) existing, owned or Controlled by it on the Effective Date, subject to the licenses and other rights for the Field granted to Athenex under this Agreement and (ii) which is discovered, made, first conceived, reduced to practice or generated under this Agreement for the Field as a result of Development or otherwise during the Agreement Term solely by Avalon employees, agents, or other persons acting under or pursuant to its authority.

(ii) Athenex shall have and retain all right, title and interest in or Control over all Intellectual Property (and Patent Rights arising thereunder) which is discovered, made, first conceived, reduced to practice or generated under this Agreement both within and outside the Field or otherwise during the Agreement Term, solely by Athenex's employees, agents, or other persons acting under or pursuant to its authority.

(iii) Avalon and Athenex shall jointly own all right, title and interest in or Control over all Intellectual Property (and Patent Rights arising thereunder) which is discovered, made, first conceived, reduced to practice or generated under this Agreement both within and outside the Field during the Agreement Term jointly by Avalon and Athenex employees, agents, or other persons acting under or pursuant to their authority ("Jointly Owned Intellectual Property"). With respect to Jointly Owned Intellectual Property, Avalon's interest in the same shall be deemed Avalon Intellectual Property and licensed to Athenex under Section 2.1. For the avoidance of doubt, the right, title and interest of a Party in, or control of, the Jointly Owned Intellectual Property shall survive the termination and expiration of this Agreement.

**(b) Employees and Agents.** Each of Avalon and Athenex shall require all of its and its Affiliates' employees to assign all inventions and corresponding patent applications that are discovered, made, first conceived, reduced to practice or generated by such employees during the Agreement Term to Avalon and/or Athenex according to the ownership principles described in Section 7. It(a) and subject to the laws of the country of employment. Each Party shall use Commercially Reasonable Efforts to require any Third Parties working on the Phase I Clinical Study or any Development under the Agreement or who receive materials relating to a Licensed Service or Know-How from a Party, to assign or grant a sublicensable exclusive license on a fully paid-up, royalty-free basis to all inventions and corresponding Patent Rights that are developed, made or conceived by such Third Parties during the Agreement Term to Avalon and/or Athenex according to the ownership principles described in Section 7.1(a).

## 7.2 Maintenance and Prosecution.

**(a) Avalon Patent Rights.** Avalon shall have the first right to file, prosecute and maintain the Avalon Patent Rights in Avalon's name, by retaining patent counsel selected by Avalon and shall be responsible for the payment of all costs and fees relating to patent prosecution and maintenance. Avalon agrees to keep Athenex informed of the course of patent prosecution, application or other proceedings and to furnish Athenex, per its request, with copies of office actions received by Avalon from any Regulatory Authority within the Territory concerning Avalon Patent Rights. Athenex may request that Avalon make additional patent application filings within the Territory for the Avalon Intellectual Property. If Avalon elects not to make such filings within a period of thirty (30) days from the date of such request, Athenex shall have the right to make the filing and prosecute the application in the name of and as agent for Avalon. In such event, Athenex shall be responsible for the payment of all costs and fees relating to patent filing, prosecution and maintenance.

(b) **Athenex Patent Rights.** Athenex shall have the sole right to file, prosecute and maintain the Athenex Patent Rights in Athenex's name, by retaining patent counsel selected by Athenex and shall be responsible for the payment of all costs and fees relating to patent prosecution and maintenance. Athenex agrees to keep Avalon informed of the course of patent prosecution, application or other proceedings and to furnish Avalon, per its request, with copies of office actions received by Athenex from any Regulatory Authority outside the Territory concerning Athenex Patent Rights. Athenex shall also have the first right to file, prosecute and maintain all Jointly Owned Intellectual Property in all countries in the Territory.

(c) The responsible Party under this Section 7.2 shall solicit the other Party's review of the nature and text of any patent applications within the Territory and important prosecution matters related thereto in reasonably sufficient time prior to the filing thereof, and the responsible Party shall take into account the other Party's reasonable comments related thereto. Each Party shall execute all documents and take all actions as are reasonably requested by the other Party with respect to any filings and registrations.

### 7.3 Third Party Intellectual Property.

(a) In the event that a Party becomes aware of any claim that the practice by either Party of Know-How or Patent Rights or manufacture, import, use or sale of any Good or Licensed Service hereunder infringes the intellectual property rights of any Third Party in the Territory, such Party shall promptly notify the other Party. The Parties shall thereafter discuss the situation, and to the extent reasonably necessary, attempt to agree on a course of action.

(b) If within ten (10) Business Days the Parties fail to agree upon an appropriate course of action in the Territory, Avalon shall have the obligation to indemnify, defend and hold harmless Athenex in connection with any action in the Territory related to the intellectual property rights of any Third Party or to initiate and prosecute legal action in the Territory related to the intellectual property rights of any Third Party in the name of Avalon and/or Athenex. Avalon shall keep Athenex reasonably informed as to the progress of any such action. Athenex shall render, all assistance reasonably requested in connection with any action taken by Avalon. However, the control of such action, including whether to initiate any legal proceeding and/or the settlement thereof, shall solely be under the control of Avalon; *provided that* Avalon shall not settle any such claim or proceeding in a manner that materially adversely affects Athenex's rights under this Agreement or which results in any monetary payment by or financial loss to Athenex, without Athenex's written consent. Athenex shall pay for all costs and expenses incurred by Avalon in such defense. In addition, Avalon shall pay all damages awarded or settlement payments made (including future royalty or similar payments) to such Third Party.

**7.4 Patent Term Extensions.** The Parties shall cooperate with each other in obtaining patent term extensions or restorations or supplemental protection certificates or their equivalents in any country in the Territory where applicable and where desired by Athenex. Elections with respect to obtaining such extension or supplemental protection certificates shall be made in the same manner and with the same relative priorities between the Parties as is applicable to the prosecution and maintenance of Patent Rights pursuant to Section 7.2.

**ARTICLE 8**  
**CONFIDENTIALITY AND PUBLICITY**

**8.1 Non-Disclosure and Non-Use Obligations.** All Proprietary Information disclosed by one Party to the other Party hereunder shall be maintained in confidence and shall not be disclosed to any Third Party or used for any purpose except as expressly permitted herein without the prior written consent of the Party that disclosed the Proprietary Information to the other Party during the term of this Agreement and for a period of ten (10) years thereafter. The foregoing non-disclosure and non-use obligations shall not apply to the extent that such Proprietary Information:

- (a) is known by the receiving Party at the time of its receipt, and not through a prior disclosure by the disclosing Party, as documented by records;
- (b) is or becomes properly in the public domain or knowledge without breach by either Party;
- (c) is subsequently disclosed to a receiving Party by a Third Party who may lawfully do so and is not under an obligation of confidentiality to the disclosing Party; or
- (d) is developed by the receiving Party independently of Proprietary Information received from the disclosing Party, as documented by records.

**8.2 Permitted Disclosure of Proprietary Information.** Notwithstanding Section 8.1, a Party receiving Proprietary Information of another Party may disclose such Proprietary Information:

(a) to governmental or other regulatory agencies in order to obtain patents pursuant to this Agreement, or to gain approval to conduct Clinical Studies or to market a Licensed Service, but such disclosure may be only to the extent reasonably necessary to obtain such patents or authorizations and in accordance with the terms of this Agreement or as otherwise requested by the Regulatory Authorities;

(b) by Athenex to its agents, consultants, sublicensees or Affiliates in connection with the Development or Commercialization, or to otherwise enable Athenex to fulfill its obligations and responsibilities under this Agreement, on the condition that such entities agree to be bound by confidentiality obligations consistent with this Agreement; or

(c) if required to be disclosed by law or court order; *provided that* notice is promptly delivered to the non-disclosing Party in order to provide an opportunity to challenge or limit the disclosure obligations.

(d) **Certain Disclosures.** Except as set forth in this Agreement or as required by law, neither Party shall make any press release or other public announcement or other public disclosure to a Third Party concerning the existence of or terms of this Agreement, the subject matter of this Agreement or the activities contemplated hereunder, without the prior written consent of the other Party, which consent shall include agreement upon the nature and text of such release, announcement, or other disclosure, and shall not be unreasonably withheld or delayed. Each Party agrees to provide to the other Party a copy of any such press release or other public announcement or disclosure as soon as reasonably practicable under the circumstances prior to its scheduled release. Each Party shall have the right to expeditiously (but in any event within forty eight (48) hours) review and recommend changes to any such press release or other public announcement or disclosure; *provided, however,* that such right of review and recommendation shall

only apply for the first time that specific information is to be disclosed, and shall not apply to the subsequent disclosure of substantially similar information that has previously been disclosed unless there have been material developments relating to any Licensed Service since the date of the previous disclosure; *provided, further,* that each Party shall provide to the other Party reasonable advance notice of any such subsequent disclosure. Without limiting the generality of any of the foregoing, it is understood that the Parties or their Affiliates may make disclosure of this Agreement and the terms hereof in accordance with the rules and regulations of the SEC, other governmental authority, or securities exchange, may file this Agreement as an exhibit to any filing with the SEC, other governmental authority, or securities exchange, and may distribute any such filing in the ordinary course of its business; *provided, further,* that to the maximum extent allowable by the rules and regulations of the SEC, other governmental authority, or securities exchange, and except as required by applicable Laws, Avalon and Athenex shall seek to redact any confidential information set forth in such filings, and each Party shall provide a draft of the redacted version of this Agreement to the other Party no less than five (5) Business Days prior to filing with the SEC, other governmental authority, or securities exchange, and give reasonable consideration to the other Party's comments regarding any proposed redaction.

**8.3 Publications.** Athenex shall not submit for written or oral publication any manuscript, abstract or the like relating to any Goods or any Licensed Service, without the prior approval or written request of Avalon. If Athenex desires to submit such publication, it shall first deliver to Avalon, for Avalon's prior written consent, the proposed publication or an outline of the oral disclosure at least sixty (60) days prior to planned submission or presentation.

**ARTICLE 9**  
**TERM AND TERMINATION**

**9.1 Term and Expiration.** This Agreement shall be binding on the Parties as of the Effective Date. Thereafter, unless terminated earlier pursuant to Section 9.2 below, this Agreement shall extend until the date on which the last Licensed Patent expires or is invalidated (the “**Agreement Term**”). Notwithstanding the foregoing, the Agreement Term shall automatically be extended for consecutive one (1) year periods subject to the same terms and conditions set forth herein (unless agreed otherwise) unless either Party gives written notice of its intention not to extend the Agreement term: (i) at least ninety (90) days prior to the expiration date of the Avalon Patent Rights; or (ii) as soon as practically possible in the case of an invalidation claim; or (iii) at least ninety (90) days prior to the then current expiration date of the Agreement thereafter.

**9.2 Early Termination of Agreement Term.**

**(a) Termination by Agreement.**

This Agreement may be terminated in whole or in part upon mutual written agreement of the Parties.

**(b) Termination by Athenex.**

Athenex may terminate in whole or in part this Agreement in its sole discretion upon not less than six (6) months prior written notice of termination provided any time after the Effective Date.

**(c) Termination by Either Party.**

Either Party may, without prejudice to any other remedies available to it under this Agreement or at law or in equity, terminate this Agreement prior to expiration of the Agreement Term in the event that any of the following occurs:

(i) The other Party (as used in this subsection, the “**Breaching Party**”) shall have materially breached or defaulted in the performance of any of its material obligations hereunder (including a breach of the representations and warranties set forth in this Agreement), and has not cured such breach within (i) thirty (30) days after notice of such breach is provided to the Breaching Party in case the breach is a non-payment of any amount due under this Agreement that is not being disputed in good faith (which shall be deemed a material breach of a material obligation) or (ii) sixty (60) days after notice of such breach is provided to the Breaching Party for other cases of breach (or, if such default cannot be cured within such sixty (60) day period, if the Breaching Party does not commence and diligently continue actions to cure such default during such sixty (60) day period). The termination shall become effective at the end of the (i) thirty (30) day period in case the breach is a non-payment of any amount due under this Agreement that is not being disputed in good faith if the Breaching Party has not cured such breach by such date, or (ii) for other cases of breach, sixty (60) day period unless (a) the Breaching Party cures such breach during such sixty (60) day period, or (b) if such breach is not susceptible to cure within such sixty (60) day period, the Breaching Party has commenced and is diligently pursuing a cure (unless such breach, by its nature, is incurable, in which case the Agreement may

not be terminated unless the Breaching Party fails to use its best commercially reasonable efforts to prevent a similar subsequent breach). The right of either Avalon or Athenex to terminate this Agreement as provided in this Section 9.2(c)(i) shall not be affected in any way by such Party's waiver or failure to take action with respect to any previous breach or default.

- (ii) The other Party stops or suspends payment of all or a class of its debts, becomes insolvent or sells or parts with possession of the whole or a major part of its assets or major undertaking.
- (iii) An application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken (other than frivolous or vexatious applications, proceedings, notice or steps) for the winding up or dissolution of the other Party or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.
- (iv) The Parties agree in writing to terminate this Agreement.

**9.3 Effect of Expiration or Termination: Survival.**

(a) Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination, including all accrued payment obligations arising under Article 5 hereof. In addition to any other provisions of this Agreement which by their terms continue after the expiration of this Agreement, the provisions of Articles 4, 6, 7, 8, 9 and 10 shall survive the expiration or termination of this Agreement and shall continue in effect after the date of expiration or termination for the longer of (i) five (5) years or (ii) the respective periods specified therein. Any

expiration or early termination of this Agreement shall be without prejudice to the rights of any Party against the other accrued or accruing under this Agreement prior to termination. Except as expressly set forth herein, the rights to terminate as set forth herein shall be in addition to all other rights and remedies available under this Agreement, at law, or in equity, or otherwise.

(b) Payments of amounts owing to Avalon under this Agreement as of its expiration or termination shall be due and payable either (i) to the extent such amounts can be calculated and a fixed sum determined at the time of expiration or termination of this Agreement, thirty (30) days after the date of such expiration or termination, or (ii) to the extent such amounts cannot be calculated and a fixed sum determined at the time of expiration or termination of this Agreement, thirty (30) days after the date at which such amounts can be calculated and a fixed sum is mutually determined.

(c) Subject to the payment of all amounts required hereunder, Athenex and its Affiliates shall have the right to sell or otherwise dispose of the stock of any Licensed Service subject to this Agreement on hand or in process of manufacture as of the expiration or termination of this Agreement. Within thirty (30) days after the effective date of termination or expiration of this Agreement, Athenex shall notify Avalon of the amount of each Licensed Service Athenex and its Affiliates then have on hand or in the process of manufacture and shall have the right to sell in the Territory (except with respect to any country in the Territory in which any Licensed Service has been withdrawn or there is no Regulatory Approval), its remaining stock of Licensed Service until all of it is sold; *provided, however,* the terms and conditions of this Agreement shall apply to such Licensed Service so sold. Avalon hereby grants a non-exclusive license to Athenex

as necessary to sell such Licensed Service in the Territory, subject to payment of all related amounts due under this Agreement. Any remaining quantities of Licensed Service not sold, at Athenex's election, may be (i) destroyed by Athenex at Athenex's cost, (ii) sold to Avalon at Athenex's procurement cost for such Licensed Service, or (iii) sold to customers in the Territory.

(d) Upon the termination or expiration of this Agreement, the following shall also be applicable: (i) at Avalon's request, Athenex shall promptly transfer and return to Avalon copies of all Data, reports, records and materials in Athenex's possession or control that relate to all Goods or Licensed Services and return to Avalon all relevant records and materials in Athenex's possession or control containing Proprietary Information of Avalon (*provided that* Athenex may keep one copy of such Proprietary Information of Avalon for archival purposes only); (ii) Athenex shall transfer to Avalon ownership of any INDs, Regulatory Approvals, Drug Approval Applications and any other regulatory filings or submissions made or filed for any Licensed Service by Athenex or its designees; (iii) Avalon shall promptly return to Athenex all relevant records and materials in Avalon's possession or control containing Proprietary Information of Athenex (*provided that*, Avalon may keep one copy of such Proprietary Information of Athenex for archival purposes only); and (iv) all sublicenses between Athenex and Third Parties shall survive the termination or expiration of this Agreement and shall be assigned by Athenex to Avalon.

## ARTICLE 10 INDEMNIFICATION AND INSURANCE

**10.1 Indemnity.** For purposes of this Article 10, "**Avalon Indemnified Parties**" refers to Avalon, its Affiliates and the officers, directors, employees, shareholders, agents and successors and assigns of Avalon and its Affiliates, and "**Athenex Indemnified Parties**" refers to Athenex, its Affiliates and officers, directors, employees, shareholders, agents and successors and assigns of Athenex and its Affiliates.

**10.2 Athenex Indemnification.** Athenex shall defend the Avalon Indemnified Parties from and against all suits, claims, actions, demands, complaints, lawsuits or other proceedings, (collectively, “**Claims**”), that are brought by a Third Party, and shall indemnify and hold harmless to the fullest extent permitted by law the Avalon Indemnified Parties from and against any and all Losses, that arise out of or are attributable to, (i) Athenex’s negligence, recklessness or willful misconduct in exercising or performing any of its rights or obligations under this Agreement; or (ii) a material breach by Athenex of any of its obligations, representations, warranties or covenants under this Agreement; *provided, however,* that Athenex shall not be obligated under this Section 10.2, to the extent it is shown by evidence acceptable in a court of law having jurisdiction over the subject matter and meeting the appropriate degree of proof for such Claim that the Claim arose out of the negligence or wrongdoing on the part of Avalon.

**10.3 Avalon Indemnification.** Avalon shall defend the Athenex Indemnified Parties from and against all Claims, in each case that are brought by a Third Party, and shall indemnify and hold harmless to the fullest extent permitted by law the Athenex Indemnified Parties from and against any and all Losses that arise out of such Claims that are attributable to, (i) Avalon’s negligence, recklessness or willful misconduct in exercising or performing any of its rights or obligations under this Agreement; (ii) a material breach by Avalon of any of its obligations, representations, warranties or covenants under this Agreement; or (iii) any products liability based claim with respect to the Goods or any claim for injury to a Third-Person as a result of

the Goods; *provided, however,* that Avalon shall not be obligated under this Section 10.3, to the extent it is shown by evidence acceptable in a court of law having jurisdiction over the subject matter and meeting the appropriate degree of proof for such Claim that the Claim arose out of the negligence or wrongdoing on the part of Athenex.

**10.4 Indemnification Procedure.**

(a) Each Party shall promptly notify the other Party in writing of any Claim. Concurrent with the provision of notice pursuant to this Section 10.4(a), the Indemnified Party shall provide to the other Party copies of any complaint, summons, subpoena or other court filings or correspondence related to such Claim and will give such other information with respect thereto as the other Party shall reasonably request. The Indemnifying Party and Indemnified Party shall meet to discuss how to respond to such Claim. Failure to provide prompt notice shall not relieve any Party of the duty to defend or indemnify unless such failure materially prejudices the defense of any matter. Each Party agrees that it will take reasonable steps to minimize the burdens of the litigation on witnesses and on the ongoing business of the Indemnified Parties including making reasonable accommodations to witnesses' schedules when possible and seeking appropriate protective orders limiting the duration and/or location of depositions.

(b) Should either Party dispute that any Claim or portion of a Claim ("**Disputed Claim**") of which it receives notice pursuant to Section 10.4(a), is an indemnified Claim, it shall so notify the other Party providing written notice in sufficient time to permit such other Party to retain counsel and timely appear, answer and/or move in any such action. In such event, such other Party shall defend against such Claim; *provided, however,* that such other Party shall not settle any Claim which it contends is

an indemnified Claim without providing the Indemnifying Party ten (10) Business Days' notice prior to any such settlement and an opportunity to assume the defense and indemnification of such Claim pursuant to this Agreement. If it is determined that a Disputed Claim is subject to indemnification, the Indemnifying Party will reimburse the costs and expenses, including reasonable attorneys' fees, of the Indemnified Party.

(c) **Settlement of Indemnified Claims.** The Indemnifying Party under Sections 10.2 or 10.3, as applicable, shall have the sole authority to settle any Indemnified Claim without the consent of the other Party; *provided, however,* that an Indemnifying Party shall not, without the written consent of the other Party, as part of any settlement or compromise (i) admit to liability on the part of the other Party; (ii) agree to an injunction against the other Party; or (iii) settle any matter in a manner that separately apportions fault to the other Party. The Parties further agree that as part of the settlement of any Indemnified Claim, an Indemnifying Party shall obtain a full, complete and unconditional release from the claimant on behalf of the Indemnified Parties.

#### 10.5 Insurance.

(a) Athenex shall maintain in the Territory, commencing as of the Effective Date, commercial general liability insurance (including coverage for product liability, contractual liability, bodily injury, property damage and personal injury), in form and substance reasonably satisfactory to Avalon and in accordance with reasonable industry standards, with minimum limits of \$5,000,000 per occurrence or, in case of Clinical Studies, \$5,000,000 per occurrence during the period when such Clinical Studies are being conducted (the "**Insurance**"). If such Insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The Insurance shall have retroactive date to or coinciding with the Effective Date. Notwithstanding the foregoing, Athenex may satisfy the foregoing obligation with respect to the Insurance through self-insurance.

(b) Such Insurance shall insure against all liability arising out of the manufacture, use, sale, distribution, or marketing of all Licensed Services in and for the Territory. During the Agreement Term, Athenex shall not permit such Insurance to be reduced, expired, materially amended or canceled during the period of the Insurance and/or the Agreement without reasonable prior written notice that shall be sent by registered mail to Avalon. Upon request Athenex shall provide certificates of insurance to Avalon evidencing the coverage specified herein.

(c) Except as expressly stated herein, a Party's liability to the other is in no way limited to the extent of the Party's insurance coverage.

(d) The Insurance shall contain an explicit clause, stating that each Party and its insurer waive their rights of subrogation against the other Party and its directors, employees and/or any one on its behalf with respect to the Insurance. Such waiver shall not apply in the event of a malicious act.

(e) The Insurance shall be primary to any other insurance maintained by each Party and each Party hereby waives any claim or demand as to participation in any such other insurance.

(f) The Insurance shall be valid in any location worldwide regarding the activities performed by each Party hereunder (including worldwide jurisdictions) for any destination or lawsuit which will be served against the other Party.

**10.6 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY SUCH OTHER PARTY OR ITS AFFILIATES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT. THE FOREGOING SENTENCE SHALL NOT LIMIT THE OBLIGATIONS OF EITHER PARTY TO INDEMNIFY THE OTHER PARTY FROM AND AGAINST THIRD PARTY CLAIMS UNDER THIS ARTICLE.

## ARTICLE 11 MISCELLANEOUS

**11.1 Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of the Agreement during the period of time when such failure or delay is caused by or results from events beyond the reasonable control of a Party, including fire, flood, earthquake, explosion, storm, blockage, embargo, war, acts of war (whether war be declared or not), terrorism, insurrection, riot, civil commotion, strike, lockout or other labor disturbance, failure of public utilities or common carriers, act of God or act, omission or delay in acting by any governmental authority or the other Party. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practicable.

**11.2 Assignment.** The Agreement may not be assigned or otherwise transferred without the prior written consent of the other Party; *provided, however,* that either Party may assign this Agreement to an Affiliate or in connection with the transfer or sale of its business or all of its assets or in the event of a merger, or consolidation upon prior written notice to the other Party only if the transferring Party warrants and ensures and the successor entity agrees to assume all (and not less than all) of the transferring Party's responsibilities and obligations under this Agreement. Notwithstanding, any assignment permitted under this Agreement shall not relieve the transferring Party of its responsibilities for performance of its obligations under this Agreement as a primary obligor. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties. Any assignment not in accordance with this Agreement shall be void.

**11.3 Severability.** In the event that any of the provisions contained in this Agreement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of the Parties. In such event, the Parties covenant and agree to renegotiate any such term, covenant or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the Parties that the basic purposes of this Agreement are to be effectuated.

**11.4 Notices.**

(a) Correspondence, reports, documentation, and any other communication in writing between the Parties in the course of ordinary implementation of this Agreement (but not including any notice required by this Agreement) shall be in writing and delivered by hand, sent by e-mail, or by overnight express mail (e.g., FedEx) to any one (I) representative designated by the Party which is to receive such written communication.

(b) Extraordinary notices and communications (including but not limited to notices of termination, force majeure, material breach, change of address, or any other notices required by this Agreement) shall be in writing and shall be deemed to have been given when delivered in person, or sent by overnight courier service (e.g., FedEx), postage prepaid, or by facsimile or email confirmed by prepaid registered or certified air mail letter, return receipt requested, to the following addresses of the Parties (or to such other address or addresses as may be specified from time to time in a written notice), and shall be deemed to have been properly served to the addressee upon receipt of such written communication, to the following addresses of the Parties:

if to Athenex to:

ATHENEX THERAPEUTICS LIMITED

Unit 608-613 IC Development Centre, No. 6 Science Park West Avenue  
Hong Kong Science Park, Shatin  
Hong Kong  
Attention: Teresa Bair, Director  
Email: [tbair@athenex.com](mailto:tbair@athenex.com)  
Fax No.: +1-716-800-6816

if to Avalon to:

AVALON HEPAPOC LIMITED

10/F, Fung House, 19-20 Connaught Road Central  
Hong Kong  
Attention: Eric Lau, Financial Controller  
Email: [ericlau@avalonbiomedical.com](mailto:ericlau@avalonbiomedical.com)  
Fax No.: +852 3706-5542

or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if personally delivered or sent by email facsimile on a Business Day, upon confirmed delivery by nationally-recognized overnight courier if so delivered, and on the third Business Day following the date of mailing if sent by registered or certified air mail.

**11.5 Specific Performance.** Each of the Parties acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in all material respects or otherwise are breached. Accordingly, and notwithstanding anything herein to the contrary, each of the Parties agrees that the other Party shall be entitled to seek injunctive relief to prevent breaches of the provisions of this Agreement, and/or to enforce specifically this Agreement and the terms and provisions hereof, in any action instituted in any court or tribunal having jurisdiction over the Parties and the matter, without posting any bond or other security, and that such injunctive relief shall be in addition to any other remedies to which such Party may be entitled, at law or in equity. Any such action or proceeding shall be heard and determined in any court sitting in Singapore or other court of competent jurisdiction in the Territory, and the Parties hereto hereby irrevocably submit to the exclusive jurisdiction of such courts in any such action or proceeding and irrevocably waive any defense of any inconvenient forum or alternative forum to the maintenance of any such action or proceeding, including any decision by such court regarding the substantive issues involved in the underlying dispute.

**11.6 Further Assurances.** Each of the Parties shall take such further actions as shall be necessary or desirable in order to effectuate the respective rights and obligations hereunder.

**11.7 Applicable Law, Venue and Dispute Resolution.** This Agreement shall be governed by the laws of the State of New York. The United Nations Convention on Contracts for the International Sale of Goods shall not apply in any action, suit or proceeding arising out of or relating to this Agreement. Except as provide in Section 11.5, with regard to actions of

specific performance, all disputes which arise in connection with this Agreement and its interpretation shall be settled in amicable way between the Parties. If the dispute cannot be settled in an amicable manner, it will be settled by arbitration to be held in Republic of Singapore in conformity with commercial arbitration rules of the International Chamber of Commerce. The award rendered by arbitration shall be final and binding upon the Parties hereto.

**11.8 Entire Agreement.** This Agreement, including the exhibits and schedules hereto, contains the entire understanding of the Parties with respect to the subject matter. All express or implied agreements and understandings, either oral or written, heretofore made, including any offering letters, letters of intent, or term sheets, are expressly superseded by this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by all Parties hereto.

**11.9 Independent Contractors.** It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.

**11.10 Waiver.** The waiver by a Party hereto of any right hereunder or the failure to perform or of a breach by another Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.

**11.11 Headings; References.** The captions to the several Articles and Sections hereof are not a part of the Agreement but are merely guides or labels to assist in locating and reading the several Articles and Sections hereof. Any reference in this Agreement to an Article, Exhibit, Schedule or Section shall, unless otherwise specifically provided, be to an Article, Exhibit, Schedule or Section of this Agreement. The words “**including**”, “**includes**” and “**such as**” are used in their non-limiting sense and have the same meaning as “**including without limitation**” and “**including but not limited to.**” “**Hereunder**” and “**hereto**” means under or pursuant to any provision of this Agreement.

**11.12 Interpretation.** Both Parties have had the opportunity to have this Agreement reviewed by an attorney; therefore, neither this Agreement nor any provision hereof shall be construed against the drafter of this Agreement.

**11.13 Counterparts.** The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to the Agreement transmitted by fax, by email in “**portable document format**” (“pdf”) or by any other electronic means intended to preserve the original graphic and pictorial appearance of the Agreement shall have the same effect as physical delivery of the paper document bearing an original signature.

**11.14 No Third Party Beneficiaries.** Except as specifically set forth herein, none of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including any creditor of either Party hereto. No such Third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any claim in respect of any debt, liability or obligation (or otherwise) against either Party hereto.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first set forth above.

**ATHENEX THERAPEUTICS LIMITED**

By: \_\_\_\_\_  
Name: Johnson Lau Yiu Nam  
Title: Director

By: \_\_\_\_\_  
Name: Teresa Bair  
Title: Director

**AVALON HEPAPOC LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE 1.32  
AVALON GOODS



Galactose Meter and Strip

SCHEDULE 1.53  
AVALON GOODS SPECIFICATIONS

**Meter**

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FOIA CONFIDENTIAL TREATMENT REQUESTED  
Confidential Materials omitted and filed separate with the Securities and Exchange Commission  
Triple asterisks denote omissions

SCHEDULE 1.8  
AVALON INTELLECTUAL PROPERTY

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Athenex Announces Pipeline Expansion Initiatives in Conjunction with a Strategic Investment of \$100 million by Perceptive Advisors

- **Collaboration with Xiangxue Pharmaceutical Expands Portfolio in to TCR-T Immunotherapy**
- **In-Licensing of a Biologic Product from Avalon BioMedical Management**

BUFFALO, N.Y., July 01, 2018 (GLOBE NEWSWIRE) — Athenex, Inc. (NASDAQ:ATNX), a global biopharmaceutical company dedicated to the discovery, development and commercialization of novel therapies for the treatment of cancer and related conditions, today announced that it has entered into the following agreements:

- Establishment of a joint venture with Xiangxue Life Sciences, a wholly-owned subsidiary of Guangzhou Xiangxue Pharmaceutical Co., Ltd. (Xiangxue Pharmaceutical), for the research, development and commercialization of T-cell receptor-engineered T cells (TCR-T), a cancer immunotherapy technology, based on the novel approach on high-affinity TCR developed by Xiangxue Life Sciences;
- In-licensing of worldwide rights to a pegylated genetically modified human arginase from Avalon PolyTom (HK) Limited (PolyTom), a subsidiary of Avalon Biomedical Management Limited; and
- A strategic investment of US\$100 million from Perceptive Advisors, an institution dedicated to supporting the most promising technologies in healthcare.

#### ***Expansion into TCR-T Immunotherapy***

Xiangxue Life Sciences is a wholly-owned subsidiary of Xiangxue Pharmaceutical, a long term partner of Athenex for the development of KX-02 for glioblastoma multiforme in China. Xiangxue Life Sciences is a Chinese biopharmaceutical company focused on TCR-based therapies for cancer and has developed a new generation TCR-T, named HATac, which consists of the expression of high binding affinity soluble T-cell receptors on the engineered T-cells to target HLA-antigenic peptide complex on certain types of cancer cells. Early clinical studies in China demonstrated a good safety profile in patients.

Axis Therapeutics Limited, a new joint venture to be established and owned initially as 55% by Athenex and 45% by Xiangxue Life Sciences, has in-licensed the worldwide (excluding mainland China) rights of all the intellectual properties and know-how of the TCR-T immunotherapy technology from Xiangxue Life Sciences, subject to certain closing conditions and approvals. Pursuant to the terms of the license agreement and shareholders agreement, Athenex will issue US\$5 million worth of Athenex common stock to Xiangxue Life Sciences as an upfront payment and Athenex will contribute US\$30 million in cash to the joint venture. Axis Therapeutics will also pay various clinical and regulatory milestones of up to US\$110 million to Xiangxue Life Sciences. Xiangxue Life Sciences will retain the mainland China rights to the technology and there will be royalties on net income payable to Axis Therapeutics upon successful commercialization in mainland China. Additional new TCR-T technologies developed by Axis will also be partnered with Xiangxue Pharmaceutical in the future for the mainland China rights.

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### ***Expansion into Biologics for Oncology***

Athenex has strategically in-licensed a pegylated genetically modified human arginase, or Pegtomarginase, which was initially developed by the Hong Kong Polytechnic University and subsequently licensed to PolyTom. Through extensive research, a single isomer of pegylated genetically modified human arginase with a favorable pharmacokinetic and potency profile was identified and preclinical work demonstrated that the molecule represents a promising clinical candidate. The anti-cancer mechanism of this biologic product lies in that some cancers do not express either ornithine transcarbamylase (OTC) and/or argininosuccinate synthetase (ASS), two enzymes critical for the synthesis of arginine in the urea cycle pathway. As cancer cells will not be able to synthesize arginine, they will have to depend on external supply of arginine for tumor survival and growth. This treatment approach shows specificity as the depletion of circulating arginine will starve such OTC-/ASS- deficient cancer cells, while normal cells can synthesize arginine intracellularly through urea cycle for their survival.

### ***Strategic Investment by Perceptive Advisors***

Perceptive Advisors, an investment manager with a deep history in supporting biotechnology companies, will provide a combination of equity and debt financing to support Athenex's operations and continued development, including pipeline expansion initiatives. Perceptive Advisors will invest US\$100 million in Athenex, comprised of US\$50 million in equity and US\$50 million in debt.

Dr. Johnson Lau, Chairman and CEO of Athenex, commented, "Given our confidence in our two Phase III programs in Oraxol for metastatic breast cancer and KX-01 ointment for actinic keratosis, we are delighted to have this opportunity to further expand our product pipeline. The additions of TCR-T based cancer immunotherapy in collaboration with our long term business partner, Xiangxue Pharmaceutical and its subsidiary Xiangxue Life Sciences, and of an anti-cancer biologic will further complement and enhance our Oncology Innovation Platform. We are particularly excited about the potential synergies that can be created between the new therapies and our existing pipeline. We have developed a business strategy to fully explore the potential of all these platforms. We are also grateful to have Perceptive Advisors as our financial partner."

Mr. YongHui Wang, CEO of Xiangxue Life Sciences and Chairman and CEO of Xiangxue Pharmaceutical, said, "Athenex has been an excellent partner of ours, as evidenced by our successful KX-02 collaboration in China. We have witnessed the tremendous growth of Athenex and their effective execution in research and development as well as business expansion. We are a strong believer in the Athenex team and are delighted to form this new Joint Venture with Athenex to take the leadership in exploring a new and promising immunotherapy technology in the global scene. HATac is a breakthrough technology. The combination of this technology in conjunction with the Athenex pipeline and the business plan of Axis Therapeutics holds great promise for the treatment of solid tumors."

Mr. Joseph Edelman, CEO and Portfolio Manager, Perceptive Advisors, added "TCR-engineered cellular therapy represents a potential paradigm shift in the treatment of solid tumors by working with a patient's own immune system to target specific cancer peptides in the context of presentation by the patient's HLAs. We are also excited about the metabolic treatment of cancer through the depletion of arginine, which could enable novel future therapies by selectively killing cancer cells through starvation. These two new additions, coupled

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with the exciting existing clinical pipeline provide an opportunity for synergy creation across Athenex's business. We are excited to have this strong oncology product pipeline in the hands of a proven management team that has consistently demonstrated an ability to deliver in both clinical studies and commercialization execution. We look forward to continuing our support for their initiatives going forward."

Mr. Sam Chawla, Portfolio Manager, Perceptive Advisors, stated, "We are impressed by Athenex's robust clinical stage product pipeline and its unique business model. The management team has continually demonstrated strong execution capabilities, as evidenced by the clinical development timelines for its two lead Phase III assets and the rapid build-out of its commercial platform to support the future launch of Athenex's proprietary products. Athenex has also been successful in securing non-dilutive government funding in the U.S. and Asia to build manufacturing facilities. We are excited to have the opportunity to partner with Athenex to enable the continued growth and expansion strategies of the Company."

As an oncology focused biopharmaceutical company, Athenex has a pipeline of seven clinical stage products, two of which are in Phase III clinical studies. Oraxol, a novel oral formulation of paclitaxel combined with a novel oral non-absorbable P-glycoprotein inhibitor, has completed the recruitment of 180 patients for the second interim analysis to be conducted in the third quarter of 2018 of a Phase III clinical trial for metastatic breast cancer. KX-01 ointment for the treatment of actinic keratosis has already completed recruitment for two Phase III clinical studies.

Laidlaw & Company (UK) LTD served as the sole placement agent to Athenex in relation to the strategic investment by Perceptive Advisors.

**Conference Call and Webcast Information:**

The Company will host a conference call to discuss the transaction today, July 2, 2018, at 8:30 a.m. eastern time. To participate in the call, dial (855) 227-0567 (domestic) or (612) 979-9912 (international) fifteen minutes before the conference call begins and reference the conference passcode 9794249. A replay will be available approximately one hour after the recording through Monday, July 9, 2018 and can be accessed by dialing (855) 859-2056. The live conference call and replay can also be accessed via audio webcast at the Investor Relations section of the Company's website, located at [www.athenex.com](http://www.athenex.com). An archive will be available at this website until August 2, 2018.

**About Athenex, Inc.**

Founded in 2003, Athenex, Inc. is a global clinical stage bioharmaceutical company dedicated to becoming a leader in the discovery and development of next generation drugs for the treatment of cancer. Athenex is organized around three platforms, including an Oncology Innovation Platform, a Commercial Platform and a Global Supply Chain Platform. Athenex's Oncology Innovation Platform generates clinical candidates through an extensive understanding of kinases, including novel binding sites and human absorption biology, as well as through the application of Athenex's proprietary research and selection processes in the lab. The Company's current clinical pipeline is derived from two different platform technologies Athenex calls Orascovery and Src Kinase Inhibition. The Orascovery platform is based on the novel oral P-glycoprotein pump inhibitor molecule HM30181A, through which Athenex is able to facilitate oral absorption of traditional cytotoxics, which Athenex believes may offer improved patient tolerability and efficacy as compared to IV administration of the same cytotoxics. The Orascovery platform was developed by Hanmi Pharmaceuticals and licensed exclusively to Athenex for all major worldwide territories except Korea, which is retained by Hanmi. The Src Kinase Inhibition platform refers to novel small molecule compounds that have multiple mechanisms of action, including the inhibition of the activity of Src Kinase and the inhibition of tubulin polymerization during cell division. Athenex believes the combination of these mechanisms of action provides a broader range of anti-cancer activity as compared to either mechanism.

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of action alone. Athenex's employees worldwide are dedicated to improving the lives of cancer patients by creating more active and tolerable treatments. Athenex has offices in Buffalo and Clarence, New York; Cranford, New Jersey; Houston, Texas; Chicago, Illinois; Hong Kong; Taipei, Taiwan and multiple locations in Chongqing, China. For more information about Athenex, visit [www.athenex.com](http://www.athenex.com)

#### **About Guangzhou Xiangxue Pharmaceutical Co., Ltd. (XPH)**

Founded in 1997 and is located in Guangzhou Science City, Guangzhou Economic & Technical Development District (GETDD), which is part of the core area of Guangdong, Hong Kong and Macao, or the Greater Bay Area. XPH is a high-tech enterprise integrating manufacturing, operation and R&D of products including pharmaceuticals, biological medicine, functional food, Chinese medicines and medical devices. XPH is recognized as one of pharmaceutical enterprises with most development potential in the industry in China and was listed in Shenzhen Stock Exchange in 2010 (stock code: 300147). XPH has directed its attention to leading biomedical technologies since 2012. XPH has built an international cooperative innovation system focusing on focused scientific research led by talent teams to introduce new medical innovative technologies. One important focus is on clinical immunotherapy development using the cutting-edge technologies involving high affinity specific T-cell receptor (TCR). Xiangxue Life Sciences (XLifeSc) is a wholly-owned subsidiary of Xiangxue Pharmaceutical, focused on TCR-based therapies for cancer and has developed a new generation TCR-T, named TAEST (TCR affinity enhanced specific T-cell-therapy), consisting of the expression of affinity enhanced T-cell receptors on the engineered T-cells to target HLA-antigenic peptide complex on certain types of cancer cells. Early clinical studies in China demonstrated a good safety profile in patients. For more information about XPH, visit [www.xphcn.com](http://www.xphcn.com)

#### **About Perceptive Advisors**

Founded in 1999 and based in New York, NY, Perceptive Advisors is an investment management firm focused on supporting the progress of the life sciences industry by identifying opportunities and directing financial resources to the most promising technologies in healthcare. For more information about Perceptive, visit [www.perceptivelife.com](http://www.perceptivelife.com)

#### **Forward-Looking Statement Disclaimer/Safe Harbor Statement**

Except for historical information, all of the statements, expectations, and assumptions contained in this press release are forward-looking statements. Actual results might differ materially from those explicit or implicit in the forward-looking statements. Important factors that could cause actual results to differ materially include: the development stage of our primary clinical candidates and related risks involved in drug development, clinical trials, regulation, manufacturing and commercialization; our reliance on third parties, including Almirall for success in certain areas of Athenex's business; need to raise additional capital; competition; intellectual property risks; risks relating to doing business in China; and the other risk factors set forth from time to time in our SEC filings, copies of which are available for free in the

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Investor Relations section of our website at <http://ir.athenex.com/phoenix.zhtml?c=254495&p=irol-sec> or upon request from our Investor Relations Department. We assume no obligation and do not intend to update these forward-looking statements, except as required by law.

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