

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

FORM 8-K

**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 1, 2022

EIGER BIOPHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36183
(Commission
File Number)

33-0971591
(IRS Employer
Identification No.)

Eiger BioPharmaceuticals, Inc.
2155 Park Blvd.
Palo Alto, California 94306
(Address of principal executive offices, including zip code)

(650) 272-6138
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report.)

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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001	EIGR	The Nasdaq Stock Market LLC

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.

Item 1.01 Entry into a Material Definitive Agreement.

Innovatus Loan and Security Agreement

On June 1, 2022, Eiger BioPharmaceuticals, Inc. (the “**Company**”) and its domestic subsidiaries (together with the Company, the “**Borrower**”) entered into a Loan and Security Agreement (the “**Loan Agreement**”) with Innovatus Life Sciences Lending Fund I, LP, as the collateral agent and as a lender (the “**Lender**”), pursuant to which the Lender has agreed to lend to the Borrower up to an aggregate principal amount of \$75.0 million in a series of term loans. On June 1, 2021, the Borrower borrowed \$40.0 million from the Lender (the “**Term A Loan**”).

Under the terms of the Loan Agreement, the Borrower may, at its sole discretion, borrow from the Lender an additional (i) up to \$17.50 million term loan (the “**Term B Loan**”), which will be made available to the Borrower during the period commencing on the later of (a) the achievement of certain clinical and regulatory milestone events related to the Company’s product candidate Lonafarnib for treatment of Hepatitis Delta Virus (“**HDV**”) or the Company’s product candidate Peginterferon Lambda for treatment of HDV and (b) November 1, 2022 and ending on the earlier of (a) June 30, 2024 and (b) the occurrence of an event of default under the Loan Agreement (unless such event of default is waived) and (ii) up to \$17.50 million term loan ((the “**Term C Loan**”), and together with Term A Loan, and Term B Loan, collectively, the “**Term Loans**”), which will be made available to the Borrower during the period commencing on the later of (a) the achievement of certain clinical and regulatory milestone events related to the Company’s product candidate Lonafarnib for treatment of HDV or any other product candidate of the Company and (b) November 1, 2022 until the earlier of (a) June 30, 2024 and (b) the occurrence of an event of default under the Loan Agreement (unless such event of default is waived).

The Borrower may use the proceeds from the Term Loans solely for working capital, general corporate purposes and to fund its general business requirements. The Borrower’s obligations under the Loan Agreement are secured by a first priority security interest in substantially all of the Borrower’s current and future assets, including its intellectual property, subject to agreed exceptions.

All of the Term Loans mature on August 31, 2027 (the “**Maturity Date**”) and will be payable on an interest-only basis through July 1, 2027 (the “**Amortization Date**”). The Term Loans will bear interest at a floating per annum rate equal to the sum of (i) the greater of (a) the Prime Rate published in the Money Rates section of the Wall Street Journal (or any successor thereto) and (b) 3.50% plus (ii) 3.75%; provided that, at the election of the Borrower, up to 2.25% of such rate shall be payable in-kind until the third anniversary of the closing date.

The Borrower will be required to make a final payment of 6.50% of the principal amount of all Term Loans borrowed, payable on the earliest of (i) the Maturity Date, (ii) the acceleration of any Term Loan, or (iii) the prepayment of the Term Loans. The Borrower will be obligated to pay a prepayment fee equal to (i) 3.00% of the applicable Term Loan prepaid on or before the first anniversary of the applicable funding date, (ii) 2.00% of the applicable Term Loan prepaid on or before the second anniversary of the applicable funding date, and (iii) 1.00% of the applicable Term Loan prepaid on or before the third anniversary of the applicable funding date, and (iv) 0.00% of the applicable Term Loan prepaid thereafter and prior to the Maturity Date (each, a “**Prepayment Fee**”).

While any amounts are outstanding under the Loan Agreement, the Borrower is subject to a number of affirmative and restrictive covenants, including covenants regarding dispositions of property, business combinations or acquisitions, incurrence of additional indebtedness and transactions with affiliates, among other customary covenants. The Borrower is also restricted from paying dividends or making other distributions or payments on its capital stock, subject to limited exceptions.

Upon the occurrence of certain events, including but not limited to the Borrower’s failure to satisfy its payment obligations under the Loan Agreement, the breach of certain of its other covenants under the Loan Agreement, or the occurrence of a material adverse change, the collateral agent will have the right, among other remedies, to declare all principal and interest immediately due and payable, and the Lender will have the right to receive the final payment fee and, if the payment of principal and interest is due prior to the Maturity Date, the applicable Prepayment Fee.

The foregoing description is only a summary of certain provisions of the Loan Agreement, does not purport to be complete, and is qualified in its entirety by the terms of the Loan Agreement, a copy of which (with certain confidential terms redacted) is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

Innovatus Common Stock Purchase Agreement

On June 1, 2022, in connection with the Loan Agreement, the Company entered into a Common Stock Purchase Agreement (the “**Purchase Agreement**”) with Innovatus Life Sciences Lending Fund I, LP, Innovatus Life Sciences Offshore Fund I-A, LP, Innovatus Flagship Fund I, LP, and Innovatus Flagship Offshore Fund I, LP (each an “**Investor**,” and collectively the “**Investors**”).

The Purchase Agreement provides for the sale and issuance to the Investors of \$5,000,000 of the Company’s common stock (the “**Shares**”) at a price per share equal to the volume-weighted average price (as reported by the Nasdaq Global Market) of one share of Common Stock for the five (5) trading days immediately preceding June 1, 2022. The closing occurred on June 3, 2022. Investors have agreed to certain trading and other restrictions with respect to the Shares, including a restriction on sales or other transfers of the Shares, subject to certain exceptions, for a period of 6 months from the closing date.

The Shares will be sold and issued in a private placement in reliance on Section 4(a)(2) of the Securities Act of 1933, as amended, and/or Regulation D promulgated thereunder. The Company relied upon these exemptions from registration based in part on the representations made by the Investors in the Purchase Agreement. The Investors will acquire the Shares for investment for the Investors’ own account and not with a view to or for sale in connection with any distribution thereof, and appropriate legends will be affixed to the Shares.

The foregoing description is only a summary of certain provisions of the Purchase Agreement, does not purport to be complete, and is qualified in its entirety by the terms of the Purchase Agreement, a copy of which is filed as Exhibit 10.2 hereto and is incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement.

Oxford Loan and Security Agreement

On June 1, 2022, in connection with the Company’s entry into the Loan Agreement discussed in Item 1.01 of this Report, the Company approved the voluntary prepayment of the outstanding amounts due under the Company’s Loan and Security Agreement with Oxford Finance LLC as collateral agent and as a lender (the “**Oxford Lender**”) most recently amended on October 6, 2021 (as amended and restated, the “**Oxford Loan Agreement**”), with such prepayment to be effected on June 1, 2022 (the “**Prepayment Date**”). On the Prepayment Date, the Company paid the Oxford Lenders: (i) the \$30,000,000.00 outstanding principal balances, (ii) \$244,000.00 in accrued and unpaid interest, and (iii) other final payments consisting of \$3,283,760.32, for a total payment of \$33,527,760.32. The material terms of the Oxford Loan Agreement are described in the Company’s Current Report on Form 10-Q filed with the Securities and Exchange Commission on May 5, 2022 and are incorporated herein by reference.

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

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

Item 3.02 Unregistered Sales of Equity Securities.

The information under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1*	Loan and Security Agreement
10.2	Common Stock Purchase Agreement
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b)(10). Such excluded information is not material and is the type that the registrant treats as private or confidential.

This Current Report on Form 8-K contains forward-looking statements, including, but not limited to, statements related to the availability and funding of Term B Loans and the Term C Loan, the timing thereof and the satisfaction of the conditions thereto, including achievement of certain milestones described above. Actual results could differ materially from these forward-looking statements as a result of certain factors, including, without limitation: risks associated with the satisfaction of the conditions to the funding of Term B Loans and the Term C Loans, and the Company's ability to maintain (and otherwise comply with the covenants in) the Loan Agreement. The Company disclaims any obligation or undertaking to update or revise any forward-looking statements contained in this Current Report on Form 8-K.

SIGNATURES

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

Eiger BioPharmaceuticals, Inc.

Dated: June 7, 2022

By: /s/ Sriram Ryali
Sriram Ryali
Chief Financial Officer

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (as the same may be amended, restated, modified, or supplemented from time to time, this “**Agreement**”) dated as of June 1, 2022 (the “**Effective Date**”) among INNOVATUS LIFE SCIENCES LENDING FUND I, LP, a Delaware limited partnership, as collateral agent (in such capacity, together with its successors and assigns in such capacity, “**Collateral Agent**”), and the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including INNOVATUS LIFE SCIENCES LENDING FUND I, LP in its capacity as a Lender, and EIGER BIOPHARMACEUTICALS, INC., a Delaware corporation (“**Parent**”), EB Pharma, LLC, a Delaware limited liability company (“**EB Pharma**”) and EBPI Merger, Inc., a Delaware corporation (“**EBPI**”), each with offices located at 2155 Park Blvd., Palo Alto, CA 94306 (Parent, EB Pharma and EBPI, individually and collectively, jointly and severally, “**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. DEFINITIONS, ACCOUNTING AND OTHER TERMS

1.1 Capitalized terms used herein shall have the meanings set forth in Section 13 to the extent defined therein. All other capitalized terms used but not defined herein shall have the meaning given to such terms in the Code. Any accounting term used but not defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. Notwithstanding anything herein to the contrary, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any treatment of any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2017, as a result of the effectiveness of the Financial Accounting Standards Board Accounting Standards Codification 842 (or any other Accounting Standards Codification having a similar result or effect) (and related interpretations). The term “financial statements” shall include the accompanying notes and schedules. Any section, subsection, schedule or exhibit references are to this Agreement unless otherwise specified.

2. LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay to Collateral Agent, for distribution to each Lender, the outstanding principal amount of the Term Loan advanced to Borrower by each Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loans.

(a)

(i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make a term loan to Borrower on the Effective Date in an aggregate principal amount of up to Forty Million Dollars (\$40,000,000.00) according to each Lender’s Term Loan Commitment as set forth on Schedule 1.1 hereto (the “**Term A Loan**”). After repayment, the Term A Loan may not be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make a term loan to Borrower during the Term B Draw Period in an aggregate principal amount of up to an amount equal to Seventeen Million Five Hundred Thousand Dollars (\$17,500,000.00), according to each Lender’s Term Loan Commitment as set forth on Schedule 1.1 hereto (the “**Term B Loan**”). After repayment, the Term B Loan may not be re-borrowed. From and after the date on which the Term B Milestone is achieved, and until the two (2) week anniversary thereof, Borrower may elect to terminate each Lender’s Term Loan Commitment in respect of the Term B Loan.

(iii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make a term loan to Borrower during the Term C Draw Period in an aggregate principal amount of up to Seventeen Million Five Hundred Thousand Dollars (\$17,500,000.00) according to each Lender’s

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Term Loan Commitment as set forth on Schedule 1.1 hereto (the “**Term C Loan;**” each Term A Loan, Term B Loan and Term C Loan is referred to singly as a “**Term Loan**” and the Term A Loan, Term B Loan and Term C Loan are referred to collectively as the “**Term Loans**”). After repayment, the Term C Loan may not be re-borrowed. From and after the date on which the Term C Milestone is achieved, and until the two (2) week anniversary thereof, Borrower may elect to terminate each Lender’s Term Loan Commitment in respect of the Term C Loan.

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1st) Payment Date following the Funding Date of any Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date after such Funding Date. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make equal monthly payments of principal, together with applicable interest, in arrears, to Collateral Agent, for payment to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender’s Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to three (3) months. All unpaid principal and accrued and unpaid interest with respect to the Term Loan is due and payable in full on the Maturity Date. The Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If an event described in Section 7.2(c)(ii) occurs or the Term Loan is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loan plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Fee, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including, without limitation, Lenders’ Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Fee had not previously been paid in full in connection with the prepayment of the Term Loan in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Fee in respect of the Term Loan.

(d) Permitted Prepayment of Term Loan. After the date that is the first anniversary of the Funding Date of the Term Loan, the Borrower shall have the option to prepay all, but not less than all, of the Term Loan advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loan at least five (5) Business Days prior to such prepayment, and (ii) pays to Collateral Agent for the benefit of each Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loan plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Fee, (C) the Prepayment Fee, plus (D) all other outstanding Obligations that are due and payable, including, without limitation, Lenders’ Expenses and interest at the Default Rate with respect to any past due amounts.

2.3 Payment of Interest on the Term Loan.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loan shall accrue interest at a floating per annum rate equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the Term Loan and monthly thereafter, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e); provided that at the election of Borrower (which shall be considered elected on the Funding Date of the applicable Term Loan) with no less than three (3) Business Days’ written notice to Collateral Agent prior to the applicable Funding Date, 2.25% of the Basic Rate may be payable in-kind by adding an amount equal to such portion of interest accrued to the then outstanding principal balance on a monthly basis until the third anniversary of the Effective Date so as to increase the outstanding principal balance of applicable Term Loans on each Payment Date and which amount shall be payable when the principal amount of the applicable Term Loans is payable in accordance with Sections 2.2(b) and 2.3(e) and on which principal amount interest shall be owed pursuant to Section 2.3(a).

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Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a floating per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the “**Default Rate**”). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 365 Day Year. Interest shall be computed on the basis of a three hundred sixty-five (365) day year and the actual number of days elapsed.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts maintained by Borrower or any of its Subsidiaries for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set off. Without limiting the foregoing, Collateral Agent and each Lender shall use commercially reasonable efforts to promptly notify Borrower of any amounts (other than principal and interest payments) debited from Borrower’s deposit accounts with respect to this Agreement.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender’s office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 3:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

(f) Changes in Prime Rate. In the event the Prime Rate is changed from time to time hereafter and because of any such change the Basic Rate changes, the Basic Rate shall be increased or decreased, effective as of the day of such change in the Prime Rate.

2.4 Fees. Borrower shall pay to Collateral Agent:

(a) Final Fee. The Final Fee, when due hereunder, to be shared among the Lenders in accordance with their respective Pro Rata Shares;

(b) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared among the Lenders in accordance with their respective Pro Rata Shares; and

(c) Lenders’ Expenses. All Lenders’ Expenses (including reasonable and documented attorneys’ fees and expenses for due diligence, investigation, documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due and payable.

2.5 Withholding. Payments received by the Collateral Agent or the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or

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deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.5 shall survive the termination of this Agreement. On the date of this Agreement, each Lender shall deliver, and upon a Lender Transfer resulting in actual assignment and transfer of a Term Loan, the applicable successor or assign shall deliver, to Borrower, a complete and properly executed IRS Form W-9, or equivalent for a foreign Lender (to show exemption from withholding) or successor certificate designated by the IRS (a “**Tax Certificate**”). Notwithstanding anything to the contrary in this Section 2.5, if a Lender fails to deliver a Tax Certificate, Borrower shall not be required to make any additional payments under this Section 2.5 in respect of such Lender.

2.6 Secured Promissory Notes. Each Term Loan shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a “**Secured Promissory Note**”), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender’s Secured Promissory Note, an appropriate notation on such Lender’s Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender’s Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender’s Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Term Loan. Each Lender’s obligation to make the initial Term Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance reasonably satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

- (a) original Promissory Note and this Agreement and copies of the other Loan Documents, each duly executed by Borrower and each Subsidiary party thereto, as applicable;
- (b) a completed Perfection Certificate for Borrower and each of its Subsidiaries;
- (c) duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any other Loan Party;
- (d) the Operating Documents and good standing certificates of Borrower and each Loan Party certified by the Secretary of State (or equivalent agency) of Borrower’s and each such Loan Party’s jurisdiction of organization or formation and each jurisdiction in which Borrower and each Loan Party is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;
- (e) a copy of resolutions of the governing body for Borrower evidencing approval of the Term Loan and other transactions evidenced by the Loan Documents;
- (f) duly executed original officer’s certificates for Borrower and each Loan Party that is a party to the Loan Documents certifying as to (i) the incumbency of each Responsible Officer executing each Loan Document and (ii) the documents delivered pursuant to Section 3.1(d) and 3.1(e), in a form acceptable to Collateral Agent and the Lenders;

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(g) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Term Loan, will be terminated or released;

(h) a duly executed legal opinion of Sidley Austin LLP dated as of the Effective Date;

(i) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(j) a copy of any applicable Investors Rights Agreement and any amendments thereto;

(k) duly executed Stock Purchase Agreement;

(l) payment of the Lenders' Expenses then due as specified in Section 2.4 hereof;

(m) a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's and each Loan Parties' leased locations where Collateral having a book value in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is maintained or which leased location is the head office of any Borrower;

(n) a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee where Borrower or any Loan Party maintains Collateral having a book value in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00);

(o) a payoff letter from Oxford Finance LLC in respect of the Existing Indebtedness; and

(p) evidence that (i) the Liens securing the Existing Indebtedness will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated.

Subject to Section 6.14, Collateral Agent and each Lender, by delivering its signature page to this Agreement and, if applicable, funding its portion of the initial Term Loan, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document, agreement, instrument, certificate, opinion and other deliverable required to be approved by the Collateral Agent and such Lender, as applicable, on the date hereof.

3.2 Conditions Precedent to all Term Loans. The obligation of each Lender to extend each Term Loan, including the initial Term Loan, is subject to the following conditions precedent:

(a) receipt by Collateral Agent of (i) an executed Loan Payment Request Form in the form of EXHIBIT B-1 attached hereto and (ii) an executed Disbursement Letter in the form of EXHIBIT B-2 attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of each Loan Payment Request Form and the date of each Disbursement Letter and the Funding Date of each Term Loan (unless such representation or warranty expressly relates to another date, in which case it shall be accurate and complete in all material respects as of such date); provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the funding of such Term Loan;

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(c) in such Lender's reasonable discretion, there has not been any Material Adverse Change;

(d) no Event of Default or an event that with the passage of time could result in an Event of Default, shall exist;

(e) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes, in number, form and content acceptable to each Lender, and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(f) payment of the fees and Lenders' Expenses then due and payable as specified in Section 2.5 hereof.

3.3 Covenant to Deliver. Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Term Loan. Borrower expressly agrees that the Term Loan made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Term Loan in the absence of a required item shall be made in each Lender's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loan set forth in this Agreement, to obtain the Term Loan (other than the Term Loan funded on the Effective Date), Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 3:00 p.m. New York City time five (5) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to Collateral Agent by electronic mail or facsimile a completed Disbursement Letter and Loan Payment Request Form executed by a Responsible Officer or his or her designee. The Collateral Agent may rely on any telephone notice given by a person whom Collateral Agent reasonably believes is a Responsible Officer or designee.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower shall grant to Collateral Agent, for the ratable benefit of the Lenders, a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent. Collateral Agent shall, at the sole cost and expense of the Borrower, execute and/or deliver such agreements, documents and filings as Borrower may request to effectuate the foregoing.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to extend the Term Loan has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower.

The security interests in any Collateral created hereby shall be automatically released and such Collateral sold free and clear of the lien and security interests created hereby (x) upon any disposition of Collateral permitted to be sold, transferred or assigned pursuant or in connection with a transaction permitted hereunder or (y) upon the effectiveness of any written consent to the release of the security interests created hereby in any Collateral pursuant to Section 12.5.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents.

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5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

5.1 Due Organization, Authorization: Power and Authority. Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate and any updates or supplements thereto on or before the Effective Date (each a “**Perfection Certificate**” and collectively, the “**Perfection Certificates**”). Borrower represents and warrants that all the information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries is accurate and complete in all material respects.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower’s or such Subsidiaries’ organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Borrower and each Loan Party have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of the Loan Parties have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Loan Party has given the Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent’s Lien.

(c) On the Effective Date, and except as disclosed on the Perfection Certificate (as the same may be updated from time to time in accordance with the terms of this Agreement) (i) the Collateral is not in the possession of any third party bailee, and (ii) no such third party bailee possesses components of the Collateral in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00).

(d) All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects, ordinary wear and tear excepted.

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(e) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's or any Lender's right to sell any portion of the Collateral with a value exceeding Five Hundred Thousand Dollars (\$500,000.00). Borrower shall provide written notice to Collateral Agent and each Lender within twenty (20) days of Borrower or any of its Subsidiaries entering into or becoming bound by any material license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than over-the-counter software that is commercially available to the public).

5.3 Litigation. Except as disclosed on the Perfection Certificate, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving monetary damages against Borrower or any of its Subsidiaries of more than Five Hundred Thousand Dollars (\$500,000.00). Except as disclosed on the Perfection Certificate, there are no actions, suits, investigations or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against Borrower or any Subsidiaries involving challenges to the validity of the Intellectual Property.

5.4 No Material Adverse Change; Financial Statements. All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries as of the date and for the periods presented. Lender understands that interim financial statements may not be audited and may be subject to ordinary year-end adjustments consistent with Borrower's past practices, such as for the sake of example only, changes in the fair market value of warrants. Lender therefore understands and agrees that such financial statements are therefore considered to be in draft form and subject to ordinary year-end adjustments consistent with Borrower's past practices. Since the date of the most recent financial statements submitted to the Collateral Agent, there has not been a Material Adverse Change.

5.5 Solvency. Borrower and each of its Subsidiaries, when taken as a whole, on a consolidated basis, is Solvent.

5.6 Regulatory Compliance. Neither Borrower nor any of its Subsidiaries is required to register as an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any Hazardous Substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or, to the Knowledge of Borrower, any of Borrower's or its Subsidiaries' Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement (i) is in violation of any Anti Terrorism Law, (ii) is engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or, to the Knowledge of Borrower, any of Borrower's or its Subsidiaries' Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person in violation of Anti Terrorism Laws, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to any Anti Terrorism Law.

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5.7 Investments. Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries in an amount greater than Fifty Thousand Dollars (\$50,000.00), in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the next sentence. Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted. Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed in writing for any of Borrower's or such Subsidiaries' prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Term Loan solely as working capital, general corporate purposes and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes. A portion of the proceeds of the Term A Loans shall be used by Borrower to repay the Existing Indebtedness in full on the Effective Date and fees and expenses in connection therewith and with this Agreement.

5.10 Full Disclosure. No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results, and such differences may be material).

6. AFFIRMATIVE COVENANTS

For so long as any Obligations (other than inchoate indemnity obligations) remain outstanding or any Lender has any commitment to make a Term Loan hereunder, Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

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(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral.

6.2 Financial Statements, Reports, Certificates; Notices.

(a) Deliver to Collateral Agent for delivery to each Lender:

(i) as soon as available, but no later than forty-five (45) days following after the last day of each fiscal quarter or the date of the filing of Borrower's reports on Form 10-Q with the Securities and Exchange Commission for such fiscal quarter of the Borrower, a company prepared consolidated balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such quarter certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year or within five (5) days of filing with the Securities and Exchange Commission, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (other than with respect to Maturity Date (and the impact of the Obligations payable on such date) that is within one year from the time such opinion is delivered) on such financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion (it being understood that KPMG is acceptable to the Collateral Agent);

(iii) as soon as available after approval thereof by Borrower's board of directors, but no later than the earlier of ten (10) days after such approval and forty-five (45) days after the last day of Borrower's fiscal year, Borrower's annual (A) financial projections and (B) budget, in each case, for the entire current fiscal year as approved by Borrower's board of directors, which such financial projections and budget shall be set forth in a quarterly format (such annual financial projections as originally delivered to Collateral Agent are referred to herein as the "**Annual Projections**"; provided that, any revisions to the Annual Projections approved by Borrower's board of directors shall be delivered to Collateral Agent and the Lenders no later than ten (10) days after such approval);

(iv) within five (5) days of delivery, copies of all non-ministerial statements, reports and notices made available to Borrower's board of directors provided at full meetings of the board of directors ("Board Packages"); provided however that Borrower need not provide the Lenders with copies of routine actions of the board of directors, including without limitation option and stock grants under Borrower's equity incentive plan in the normal course of business; and provided, further, however, that such Board Packages may be redacted to the extent that (i) the board of directors determines such redaction is reasonably necessary to preserve the attorney-client privilege between Borrower and its counsel or any Subsidiary of Borrower and its counsel, to protect highly confidential proprietary information, or to comply with applicable law or regulation, (ii) such redacted material relates to the Lenders (or Borrower's strategy regarding the Loans or Lenders) or (iii) such redacted material relates to executive sessions of the Borrower's board of directors;

(v) in the event that Borrower becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10 K, 10 Q and 8 K filed with the Securities and Exchange Commission;

(vi) prompt notice of any amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries in manner that is adverse to the interest of the Lenders, together with any copies reflecting such amendments or changes with respect thereto;

(vii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s);

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(viii) prompt delivery of (and in any event within five (5) days after the same are sent or received) copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change;

(ix) prompt notice after becoming aware of any event that (A) could reasonably be expected to materially and adversely affect the Borrower's Intellectual Property; provided, that if Borrower has reasonably and in good faith determined that a common interest agreement is advisable prior to disclosure of such event to preserve the attorney-client privilege between Borrower and its counsel or any Subsidiary of Borrower and its counsel, Collateral Agent and/or Lender shall enter into a common interest agreement with Borrower in a form reasonably acceptable to Borrower before any disclosure of such event is made, and (B) could reasonably be expected to result in a Material Adverse Change;

(x) written notice at least (10) days' prior to Borrower's creation of a New Subsidiary in accordance with the terms of Section 6.10;

(xi) prompt written notice of any of Borrower's (A) adding any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries), (B) changing its jurisdiction of organization, (C) changing its organizational structure or type, (D) changing its legal name, or (E) changing any organizational number (if any) assigned by its jurisdiction of organization;

(xii) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, prompt (and in any event within three (3) Business Days) written notice of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default;

(xiii) prompt notice if Borrower or such Subsidiary has Knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering;

(xiv) written notice of any commercial tort claim in excess of \$250,000 and of the general details thereof;

(xv) if Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, written notice of such occurrence and information regarding such Person's organizational identification number within seven (7) Business Days of receiving such organizational identification number; and

(xvi) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding anything to the contrary in this Section 6.2(a), documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address or on the Securities and Exchange Commission's website at www.sec.gov (or any successor website).

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above, deliver to Collateral Agent for delivery to each Lender:

(i) a duly completed Compliance Certificate signed by a Responsible Officer;

(ii) if such month is the last month of the quarter, an updated Perfection Certificate to reflect any amendments, modifications and updates to certain information in the Perfection Certificate after the

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Effective Date to the extent such amendments, modifications and updates are permitted by one or more specific provisions in this Agreement; in each case, subject to the review and approval of Collateral Agent and each Lender;

(iii) copies of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries (other than relating to Intellectual Property);

(iv) written notice of the commencement of, and any material development in, the proceedings contemplated by Section 5.8 hereof;

(v) written notice of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of more than One Hundred and Fifty Thousand Dollars (\$150,000.00); and

(vi) written notice of all returns, recoveries, disputes and claims regarding Inventory that involve more than One Hundred and Fifty Thousand Dollars (\$150,000.00) individually or in the aggregate in any calendar year.

(c) Keep proper, complete and true books of record and account in accordance with GAAP in all material respects. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole reasonable cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing. Notwithstanding the foregoing, upon request of any Lender, Borrower agrees to permit such Lender to communicate with Borrower's accounting firm with respect to the consolidated financial statements delivered pursuant to this Section 6.2.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date.

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except as otherwise permitted pursuant to the terms of Section 5.8 hereof, and shall deliver to Collateral Agent for delivery to each Lender, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request, including, but not limited to, D&O insurance reasonably satisfactory to Collateral Agent. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders (provided that Chubb is satisfactory to Collateral Agent and Lenders). All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days' prior written notice before any such policy or policies shall be materially altered or canceled. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy within 180 days of receipt thereof up to One Hundred Thousand Dollars (\$100,000.00) with respect to any loss, but not exceeding One Hundred

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Thousand Dollars (\$100,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make (but has no obligation to do so), at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

6.6 Operating Accounts.

(a) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account. For each Collateral Account that Borrower or any of its Subsidiaries at any time maintains, Borrower or such Subsidiary shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder within thirty (30) days (or such later date as Collateral Agent may agree in its reasonable discretion) following the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent; provided that Borrower's accounts with Citibank identified on the Perfection Certificate on the Effective Date will not be subject to this requirement so long as such accounts are closed no later than one hundred twenty (120) days after the date hereof (or such later date as the Collateral Agent may agree) and the aggregate balance in such accounts does not exceed \$1,500,000.00 at any given time. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees (collectively, "**Excluded Accounts**") and identified to Collateral Agent by Borrower as such in the Perfection Certificate. Collateral Agent agrees not to place a "hold" or deliver a notice of exclusive control, entitlement order, or other similar directions or instructions under any Control Agreement or similar agreements providing control of any Collateral unless an Event of Default has occurred.

(b) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Section 6.6.

6.7 Protection of Intellectual Property Rights. Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to its business; (b) promptly advise Collateral Agent in writing of a written challenge to the validity, or a material infringement by a third party of its Intellectual Property material to its business; and (c) not allow any Intellectual Property material to its business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent. If Borrower or any of its Subsidiaries (i) obtains any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark or servicemark, then Borrower or such Subsidiary shall no later than the end of the fiscal quarter during which registration for such Intellectual Property is obtained or applied for, provide written notice thereof to Collateral Agent and each Lender and shall execute such intellectual property security agreements and other documents and take such other actions as Collateral Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in such property to the extent that such property constitutes Collateral; provided, however, before filing such security interests in any jurisdiction outside the United States, the Collateral Agent shall use its reasonable discretion to determine the commercial reasonableness of making such filings. If Borrower or any of its Subsidiaries decides to register any copyrights or mask works in the United States Copyright Office, Borrower or such Subsidiary shall, to the extent constituting collateral: (x) provide Collateral Agent and each Lender with prompt written notice of Borrower's or such Subsidiary's intent to register such copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Collateral Agent may reasonably request in its good faith business judgment to perfect and maintain a first priority

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perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office. Borrower or such Subsidiary shall promptly provide to Collateral Agent and each Lender with evidence of the recording of the intellectual property security agreement necessary for Collateral Agent to perfect and maintain a first priority perfected security interest in such property.

6.8 Litigation Cooperation. Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, upon reasonable prior notice and during reasonable hours, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to an act of Borrower in connection with this Agreement.

6.9 Landlord Waivers; Bailee Waivers. In the event that Borrower or any other Loan Party, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Loan Party will provide written notice thereof to Collateral Agent and, in the event that the new location is the chief executive office of the Borrower or such Loan Party or the Collateral at any such new location is valued in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate, at Collateral Agent's election, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

6.10 Creation/Acquisition of Subsidiaries. In the event any Borrower or any Loan Party creates or acquires any Subsidiary after the Effective Date, Borrower or such Loan Party shall promptly notify Collateral Agent of such creation or acquisition, and Borrower or such Loan Party shall take all actions reasonably requested by Collateral Agent to achieve any of the following with respect to such "**New Subsidiary**" (defined as a Subsidiary formed after the date hereof during the term of this Agreement): (i) to, at the option of the Borrower, cause such New Subsidiary to become either a co-Borrower hereunder, if such New Subsidiary is organized under the laws of the United States, or a secured guarantor with respect to the Obligations; and (ii) to grant and pledge to Collateral Agent a perfected security interest in the Shares of such New Subsidiary.

6.11 Further Assurances. Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

6.12 Financial Covenant.

(a) Borrower shall deliver to Collateral Agent the Management Plan prior to the third anniversary of the Effective Date, which Management Plan shall cover all applicable periods commencing on the third anniversary of the Effective Date through the Maturity Date on or before May 1, 2025.

(b) Beginning on the date that is the third anniversary of the Effective Date, Borrower shall achieve the following TTM Revenue, as determined pursuant to the most recent financial statements delivered (or required to be delivered) under Section 6.1(a)(i) or 6.1(a)(ii), as applicable, for the relevant testing period: As tested as of the last day of each quarter commencing with the First Testing Quarter, TTM Revenue for the 12-month period then ended in an amount not less than fifty percent (50.00%) of the projections for the same 12-month period as then ended as set forth in the Management Plan. Notwithstanding anything herein to the contrary, Borrower shall not be obligated to comply with the provisions of this Section 6.12(b) for any quarter if Borrower achieves TTM Revenue of at least One Hundred Million Dollars (\$100,000,000.00) as tested as of the last day of the immediately preceding quarter or has consistently maintained during the immediately preceding quarter cash assets of at least thirty percent (30%) of the aggregate principal amount of Term Loans funded and outstanding pursuant to this Agreement in Collateral Accounts subject to Control Agreements in favor of Collateral Agent.

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6.13 Liquidity Covenant. Borrower shall at all times maintain in a Collateral Account subject to a Control Agreement in favor of Collateral Agent a cash balance of not less than five percent (5%) of the aggregate principal amount of Term Loans funded and outstanding pursuant to this Agreement.

6.14 Material Agreements. Borrower shall notify Collateral Agent in writing within 14 days of termination of any Material Agreement.

7. NEGATIVE COVENANTS

For so long as any Obligations (other than inchoate indemnity obligations) remain outstanding or any Lender has any commitment to make a Term Loan hereunder, Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

7.1 Dispositions. Convey, sell, lease, transfer, assign, dispose of (collectively, “**Transfer**”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property (including Intellectual Property), except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out, surplus or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses, (d) Transfers (i) between or among Loan Parties, (ii) by Subsidiaries that are not Loan Parties in favor of Loan Parties and (iii) between or among Subsidiaries that are not Loan Parties; (e) to the extent considered Transfers, transactions permitted under Sections 7.3, 7.5, 7.7, 7.8, 7.9 and (f) Transfers to EigerBio Europe Limited in an aggregate amount not exceeding \$100,000 in any fiscal year; provided that no Intellectual Property will be Transferred to EigerBio Europe Limited other in connection with a non-exclusive Permitted Licenses.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent and within five (5) days of such change, or (ii) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own fifty one percent (51%) or more of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower’s equity securities in a public offering, or a private placement of public equity). Borrower shall not, without at least thirty (30) days’ prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person other than pursuant to a **Permitted Acquisition** or a merger or reconsolidation solely among Loan Parties. A Subsidiary (including without limitation of EB Pharma and EBPI) may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is or becomes a “co Borrower” hereunder or has provided a secured Guaranty of Borrower’s Obligations hereunder) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default has occurred or is continuing at the time thereof or arises as a result therefrom.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

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7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "**Permitted Liens**".

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Restricted Payments. Pay any dividends (other than dividends payable solely in capital stock) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed Two Hundred Thousand Fifty Dollars (\$250,000.00) in the aggregate per fiscal year).

7.8 Investments. Directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.9 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non affiliated Person, (b) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries, (c) any transaction explicitly permitted by Sections 7.1, 7.2, 7.3, 7.4, 7.5, 7.7, 7.8 and 7.10 to be entered into with an Affiliate, (d) compensation and indemnification of, and other employment arrangement with, directors, officers and employees of Borrower or any Subsidiary, in each case entered into in the ordinary course of business in accordance with Borrower's Annual Projections and corporate governance practices, and (e) loans and advances explicitly permitted hereunder to be made to the applicable Affiliate.

7.10 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

7.11 Compliance. Become required to register as an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Term Loan for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if, in each case, the failure to comply or violation thereof could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.12 Compliance with Anti Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists in a manner inconsistent with U.S. law. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or

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services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or other Anti Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti Terrorism Law, in each case where such action would be in a manner inconsistent with U.S. law.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Term Loan on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof);

8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.9 (Landlord Waivers; Bailee Waivers), 6.10 (Creation/Acquisition of Subsidiaries), 6.12 (Financial Covenant), 6.13 (Liquidity Covenant) or 6.15 (Permitted Acquisition) or Borrower violates any provision in Section 7; provided, however, in the event that the Borrower fails to comply with the requirements of the financial covenant set forth in Section 6.12, such non-compliance shall not be deemed an Event of Default unless Borrower fails to deliver to the Collateral Agent a new financial plan approved by the board of directors of the Borrower which plan must be acceptable to Collateral Agent in its discretion, along with a plan of how to finance such new board approved financial plan, no later than thirty (30) days after the date on which the breach of the financial covenant occurred; provided, further, that, upon such delivery the parties shall amend the covenant in Section 6.12 in accordance with the new financial plan which amendment must be acceptable to Collateral Agent and shall, among other things, require Borrower to achieve the revenue projections set forth in the new financial plan; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Term Loan shall be made during such cure period);

8.3 Material Adverse Change. A Material Adverse Change has occurred;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); and

(b) (i) any material portion of Borrower’s or any of its Subsidiaries’ assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any part of its business;

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8.5 Insolvency. (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty five (45) days (but no Term Loan shall be extended while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Five Hundred Thousand Dollars (\$500,000.00) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. (a) One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000.00) (not covered by independent third party insurance) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of forty five (45) days after the entry thereof or (b) any judgments, orders or decrees rendered against Borrower that could reasonably be expected to result in a Material Adverse Change;

8.8 Misrepresentations. Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement, when taken as a whole, is incorrect in any material respect when made;

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

8.10 Guaranty. (a) Any Guaranty terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; (c) any circumstance described in Section 8 occurs with respect to any Guarantor; or (d) a Material Adverse Change with respect to any Guarantor;

8.11 Governmental Approvals; FDA Action. Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term and such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change.

8.12 Lien Priority; Intellectual Property. Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement.

8.13 Delisting. The shares of common stock of Parent are delisted from The Nasdaq Stock Market LLC because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such shares not being listed promptly on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as The Nasdaq Stock Market LLC.

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of the Required lenders, shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be

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immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non exclusive, royalty free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

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(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance.

Notwithstanding anything in this Agreement to the contrary or elsewhere in the Loan Documents, following the occurrence and during the continuance of an Event of Default, other than an Event of Default under Section 8.1 or Section 8.5 of this Agreement, the Lenders agrees to forbear from selling, leasing, licensing or otherwise disposing of any Collateral comprising Intellectual Property for a period of up to forty-five (45) days after the occurrence of such Event of Default.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney in fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney in fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to extend the Term Loan hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide the Term Loan terminates.

9.3 Protective Payments. If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In

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carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

9.5 Liability for Collateral. So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Subject to the immediately preceding sentence, Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: EIGER BIOPHARMACEUTICALS, INC.
EB Pharma, LLC
EBPI Merger, Inc.
2155 Park Blvd.
Palo Alto, CA 94306
Attn: Sri Ryali
Email: [***]

with a copy (which shall not constitute notice) to: SIDLEY AUSTIN LLP
555 California Street Suite 2000
San Francisco, CA 94104
Attn: Carlton Fleming
Email: [***]

If to Collateral Agent: INNOVATUS LIFE SCIENCES
LENDING FUND I, LP
777 Third Avenue, 25th Floor
New York, NY 10017
Attn: Claes Ekstrom
Email: [***]

with a copy (which shall not constitute notice) to: Greenberg Traurig, LLP
One International Place
Boston, MA 02110
Attn: Abdullah Malik
Fax: (617) 897-0983
Email: [***]

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

11.1 Waiver of Jury Trial. EACH OF BORROWER, COLLATERAL AGENT AND LENDERS UNCONDITIONALLY WAIVES ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS, ANY OF THE INDEBTEDNESS SECURED HEREBY, ANY DEALINGS AMONG BORROWER, COLLATERAL AGENT AND/OR LENDERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG BORROWER, COLLATERAL AGENT AND/OR LENDERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11.2 Governing Law and Jurisdiction.

(a) THIS AGREEMENT, THE OTHER LOAN DOCUMENTS (EXCLUDING THOSE LOAN DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK), INCLUDING ALL MATTERS OF CONSTRUCTION,

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VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to the Loan Documents shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, Borrower hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts. Notwithstanding the foregoing, Collateral Agent and Lenders shall have the right to bring any action or proceeding against Borrower (or any property of Borrower) in the court of any other jurisdiction Collateral Agent or Lenders deem necessary or appropriate in order to realize on the Collateral or other security for the Obligations. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(c) Service of Process. Borrower irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable requirements of law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrower specified herein (and shall be effective when such mailing shall be effective, as provided therein). Borrower agrees that a final judgment in any such action 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.

(d) Non-exclusive Jurisdiction. Nothing contained in this Section 11.2 shall affect the right of Collateral Agent or Lenders to serve process in any other manner permitted by applicable requirements of law or commence legal proceedings or otherwise proceed against Borrower in any other jurisdiction.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's prior written consent (which may be granted or withheld in Collateral Agent's discretion, subject to Section 12.5). The Lenders have the right to sell, transfer, assign, pledge, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; provided that any assignment by a Lender will be subject to the prior written consent of Borrower unless an Event of Default has occurred and is continuing at the time of such assignment, or the assignment is to a Lender, an Affiliate of a Lender, or an Approved Fund.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, consultants, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by an Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable and documented, attorneys' fees and expenses), except for Claims and/or losses that (x) arise from disputes solely among Indemnified Persons (other than a claim against an Indemnified Person in its role as Collateral Agent (unless such claim would otherwise be excluded pursuant to clause (y) below)) which do not arise out of any act or omission of any Loan Party or any of their Subsidiaries or (y) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified Person. Borrower

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hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.3 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.4 Correction of Loan Documents. Collateral Agent may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties, so long as Collateral Agent provides Borrower with written notice of such correction and allows the Borrower at least ten (10) days to object to such correction. In the event of such objection, such correction shall not be made except by an amendment signed by Lenders, Collateral Agent and Borrower.

12.5 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature; and

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Lenders" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.5 or the definitions of the terms used in this Section 12.5 insofar as the definitions affect the substance of this Section 12.5; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.5. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the immediately preceding sentence.

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(b) Other than as expressly provided for in Section 12.5(a)(i) (iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.7 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.8 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.8 Confidentiality. In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Term Loan permitted hereunder (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement or have agreed to similar confidentiality terms with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent at no fault of the Lenders or the Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis, in each case so long as Collateral Agent does not disclose Borrower's identity or the identity of any person associated with Borrower unless otherwise expressly permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.8 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.8.

12.9 Right of Set Off. Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmaturing and regardless of the adequacy of any other collateral securing the Obligations.
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RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY BORROWER.

12.10 Cooperation of Borrower. If necessary, Borrower agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Term Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.8, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

12.11 Public Announcement. Borrower hereby agrees that after Borrower has publicly disclosed the transactions contemplated by this Agreement on the internet at Borrower's website address or on the Securities and Exchange Commission's website at www.sec.gov (or any successor website), Collateral Agent may publicize the same by means of a tombstone advertisement on Collateral Agent's website and use Borrower's name, tradenames and logos in connection therewith.

12.12 Collateral Agent and Lender Agreement. Collateral Agent and each Lender hereby agree to the terms and conditions set forth on Annex I attached hereto. Borrower acknowledges and agrees to the terms and conditions set forth on Annex I attached hereto.

12.13 Borrower Liability. Either Borrower may, acting singly, request Credit Extensions hereunder. Each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay all Credit Extensions made hereunder, regardless of which Borrower actually receives said Credit Extension, as if each Borrower hereunder directly received all Credit Extensions. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require Collateral Agent or any Lender to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent and or any Lender may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent and the Lenders under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Collateral Agent and the Lenders and such payment shall be promptly delivered to Collateral Agent for application to the Obligations, whether matured or unmatured.

13. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

“**Account**” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

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“**Account Debtor**” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**Affiliate**” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners if such Person is a partnership and, for any Person that is a limited liability company, that Person’s managers and members.

“**Amortization Date**” is July 1, 2027.

“**Annual Projections**” is defined in Section 6.2(a).

“**Approved Fund**” is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a lender.

“**Anti Terrorism Laws**” are any laws relating to terrorism or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Basic Rate**” is with respect to each Term Loan, the floating per annum rate of interest (based on a year of three hundred sixty five (365) days) equal to the sum of (a) the greater of (i) Prime Rate, subject to Section 2.3(f), or (ii) Three and fifty hundredths percent (3.50%), and (b) Three and Seventy Five Hundredths percent (3.75%).

“**Blocked Person**” is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person majority owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” such that they are listed in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current List of Specially Designated Nationals and Blocked Persons published published by OFAC.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Burn**” is the cash used by Borrower in its operations and capital expenditures.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., and (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent.

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“**Claims**” are defined in Section 12.2.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “**Code**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

“**Collateral Agent**” is defined in the preamble hereof.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**Communication**” is defined in Section 10.

“**Compliance Certificate**” is that certain certificate in substantially the form attached hereto as Exhibit C.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another Person such as an obligation directly or indirectly guaranteed, endorsed, co made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent, for the benefit of the Lenders, obtains “control” (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Disbursement Letter**” is that certain form attached hereto as EXHIBIT B-2.

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“**DOJ**” means the U.S. Department of Justice or any successor thereto or any other comparable Governmental Authority.

“**Dollars**” “dollars” and “\$” each mean lawful money of the United States.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

“**Excluded Accounts**” is defined in Section 6.6.

“**Exigent Circumstance**” means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

“**Existing Indebtedness**” is the indebtedness of Borrower to Oxford Finance LLC owing pursuant to that certain Loan and Security Agreement, dated December 30, 2016, entered into by and between Oxford Finance LLC and Borrower as amended, restated, supplemented or otherwise modified prior to the Effective Date.

“**FDA**” means the U.S. Food and Drug Administration or any successor thereto or any other comparable Governmental Authority.

“**Final Fee**” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest or any other fee payable hereunder) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of the Term Loan pursuant to Section 2.2(c) or (d), in each case equal to Final Fee Percentage *multiplied* by the aggregate amount of the Term Loans funded, payable to Lenders in accordance with their respective Pro Rata Shares.

“**Final Fee Percentage**” is six and fifty-hundredths percent (6.50%).

“**First Testing Quarter**” is the quarter ending June 30, 2025.

“**Foreign Subsidiary**” is a Subsidiary that is not an entity organized under the laws of the United States or any state thereof.

“**Funding Date**” is any date on which the Term Loan is made to or on account of Borrower which shall be a Business Day.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” are all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders,

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customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, Registration, filing, clearance, or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body (including, without limitation, the FDA and any state board of pharmacy or state pharmacy licensing authority), court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Guarantor**” is any Person providing a Guaranty in favor of Collateral Agent for the benefit of the Lenders.

“**Guaranty**” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Hazardous Substance**” any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any of its real property or to the indoor or outdoor environment.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.2.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions or proceedings seeking reorganization, arrangement, or other relief.

“**Insolvent**” means not Solvent.

“**Intellectual Property**” means all of Borrower’s or any of its Subsidiaries’ right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

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“**Inventory**” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“**Investment**” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“**IP Security Agreement**” is that certain Intellectual Property Security Agreement executed and delivered by Borrower to Collateral Agent and dated as of the Effective Date, as may be amended, restated, or otherwise modified or supplemented from time to time.

“**Key Person**” is each of Borrower’s (i) Chief Executive Officer, who is David A. Cory as of the Effective Date and (ii) Chief Financial Officer, who is Sri Ryali as of the Effective Date.

“**Knowledge**” means to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers. For clarity, the foregoing definition is not meant to require or imply that any type of search relating to freedom to operate has been conducted or that any opinion of counsel has been obtained.

“**Lender**” is any one of the Lenders.

“**Lenders**” are the Persons identified on Schedule L.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

“**Lenders’ Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable and documented, attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement, each Secured Promissory Note, the Perfection Certificate(s), each Control Agreement, each Compliance Certificate, each Loan Payment Request Form, each Disbursement Letter, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified or supplemented from time to time.

“**Loan Parties**” are, collectively, each Borrower and each Guarantor, and “**Loan Party**” means any of the Loan Parties, individually.

“**Loan Payment Request Form**” is that certain form attached hereto as EXHIBIT B-1.

“**Management Plan**” is Borrower’s Board approved projected revenue prepared and delivered to Collateral Agent by Borrower in accordance with Section 6.12(a) of this Agreement and covering all applicable periods commencing on the third anniversary of the Effective Date through the Maturity Date, which shall be provided to the Collateral Agent prior to the third anniversary of the Effective Date.

“**Material Adverse Change**” is (a) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Subsidiary, when taken as a whole; (b) a material impairment of the prospect of repayment of any portion of the Obligations, or (c) a material adverse effect on the Collateral.

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“**Material Agreement**” is any license, agreement or other contractual arrangement with a Person or Governmental Authority whereby Borrower or any of its Subsidiaries is reasonably likely to be required to transfer, either in-kind or in cash, prior to the Maturity Date, assets or property valued (book or market) at more than Four Million Dollars (\$4,000,000.00) in the aggregate or any license, agreement or other contractual arrangement conveying exclusive rights in or to any Intellectual Property material and necessary to make, use or sell any Inventory, products or services of Borrower or any Subsidiary. For clarity, a Permitted Third-Party Agreement shall not constitute a Material Agreement.

“**Maturity Date**” is August 31, 2027.

“**Obligations**” are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Fee, the Final Fee, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents, or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents.

“**OFAC**” is the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**OFAC Lists**” are, collectively, the Specially Designated Nationals and Blocked Persons List and the Consolidated List, each maintained by OFAC including the persons added to those lists pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001).

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

“**Payment Date**” is the first (1st) calendar day of each calendar month, commencing on July 1, 2022.

“**Permitted Acquisition**” means an acquisition by Borrower of all or substantially all of the assets of, all of the ownership interests in, or a business line or unit or division of another Person and shall include any foreign corporations in the acceptable jurisdictions listed below in this definition; provided that (a) no Event of Default or event that with the passage of time would result in an Event of Default shall exist immediately before or immediately after the consummation of such acquisition, (b) such acquired Person or assets shall be in the same line of business as is conducted by Borrower as of the Effective Date (or a line of business reasonably related thereto), (c) such acquisition shall not cause the focus or locations of Borrower’s and its Subsidiaries’ operations (when taken as a whole) to be located outside of the United States, (d) such acquisition shall not constitute a hostile acquisition, (e) any Person acquired as a result of such acquisition shall, if requested by Collateral Agent become a secured Guarantor or co-Borrower, (f) in connection with such acquisition, neither Borrower nor any of its Subsidiaries (including for this purpose, the target of the acquisition) shall acquire or be subject to any Indebtedness or Liens that are not otherwise permitted hereunder, (g) all of the consideration paid in connection with such acquisition shall be in the form of stock of Borrower, except that Borrower shall be permitted to pay an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate in cash for all Permitted Acquisitions in any given fiscal year, (h) Borrower has notified the Lenders at least ten (10) Business Days in advance of entering into such transaction, which notice shall include a reasonably detailed description of such transaction and copies of pertinent documents relating to the transaction, (i) such transaction shall only involve assets and entities located in the United States, Canada and the United Kingdom, (j) Collateral Agent and the Lenders have received a certificate from a Responsible Officer together with Board approved projections certifying and setting forth in reasonable detail that Borrower has enough cash on hand to pay its projected expenses and all debt service when due for a period of

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twelve (12) months after the consummation of such transaction (after giving effect to such transaction), (k) all transactions related to such acquisition shall be consummated in all material respects in accordance with applicable law; (l) Borrower shall provide to the Lenders as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of the executed purchase agreement or similar agreement with respect to any such acquisition; (m) Borrower shall be in compliance with the covenants set forth in Section 6.12(b) and 6.13 on a pro forma basis after giving effect to such Permitted Acquisition; and (n) if such acquisition will result in an incremental Cash Burn for Borrower of greater than Five Million Dollars (\$5,000,000.00) per annum, Borrower shall deliver to Collateral Agent at least ten (10) Business Days in advance of entering into such transaction, a financial plan of how Borrower will finance such incremental Cash Burn otherwise in compliance with the terms of this Agreement.

Notwithstanding anything to the contrary contained herein, in order for any acquisition of Shares or assets of another Person to constitute a Permitted Acquisition, Borrower must comply with all of the following: (a) Borrower shall have delivered to Collateral Agent, in form and substance reasonably satisfactory to the Collateral Agent and Lenders and sufficiently in advance (and in any case no later than ten (10) Business Days prior to the Permitted Acquisition), such other financial information, financial analysis, documentation or other information relating to such Permitted Acquisition as Collateral Agent may request and the pro forma certifications required by clause (b) below; (b) prior to the date of the Permitted Acquisition, the Collateral Agent and Lenders shall have received, in form and substance reasonably satisfactory to the Collateral Agent and Lenders, a certificate of the chief financial officer of Borrower certifying compliance with the requirements contained in this definition of "Permitted Acquisition" and with the other terms of the Loan Documents (before and after giving effect to such Permitted Acquisition); and (c) Borrower shall provide to the Collateral Agent and Lenders as soon as available but in any event not later than the execution thereof, a copy of the executed purchase agreement or similar agreement with respect to the Permitted Acquisition.

"Permitted Indebtedness" is:

(a) Borrower's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s) and any Permitted Refinancing thereof;

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors and Indebtedness in connection with credit cards incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such Person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Five Hundred Thousand Dollars (\$500,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;

(g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

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(h) (i) Indebtedness between or among Loan Parties and (ii) Indebtedness between or among Subsidiaries that are not Loan Parties;

(i) Indebtedness owed by a Subsidiary that is not a Loan Party to any Loan Party, together with any amounts under the clause (i) in the definition of "Permitted Investments", in an aggregate principal amount not to exceed Two Million Dollars (\$2,000,000) in any fiscal year;

(j) Other unsecured Indebtedness not to exceed an aggregate principal amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) at any time outstanding; and

(k) Permitted Royalty Transaction.

"Permitted Investments" are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) Investments consisting of cash and Cash Equivalents, and (ii) any other Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of Deposit Accounts in which Collateral Agent has a perfected security interest;

(e) Investments in connection with Transfers permitted by Section 7.1;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's board of directors, not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate for (i) and (ii) in any fiscal year;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary;

(i) Investments in any Subsidiary that is not a Loan Party, together with any amounts under the clause (i) in the definition of "Permitted Indebtedness", in an aggregate amount not to exceed One Million Dollars (\$2,000,000) in any fiscal year;

(j) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non exclusive licensing of technology, the development of technology or the providing of technical support; and

(k) investments (i) between Loan Parties and (ii) investments between non-Loan Party Subsidiaries.

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“**Permitted Licenses**” are (a) licenses of over-the-counter software that is commercially available to the public, (b) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, (c) any license that constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise transfer any Intellectual Property, (d) in the case of any exclusive license, (i) Borrower delivers ten (10) days’ prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, (ii) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States, (iii) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement and (iv) no Event of Default has occurred or is continuing at the time of entering into such license; provided that, notwithstanding anything to the contrary herein, Permitted Third Party Agreements shall be Permitted Licenses.

“**Permitted Liens**” are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of “Permitted Indebtedness,” provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Fifty Thousand Dollars (\$50,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers’ compensation, employment insurance, old age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker’s liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower’s deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6 hereof;

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(i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(j) Liens securing Permitted Indebtedness described in clause (e) of the definition of Permitted Indebtedness so long as such Liens are restricted to the to the specific assets of Borrower with respect to which such Permitted Indebtedness was incurred;

(k) Permitted Licenses; and

(l) (i) with respect to any Permitted Royalty Transaction that is structured as a “true sale”, precautionary Liens on the applicable percentage of net sales of the applicable product or (ii) with respect to any Permitted Royalty Transaction that is not structured as a “true sale”, Liens on (x) the applicable percentage of net sales of the applicable Product that is the subject of such Permitted Royalty Transaction or (y) any other asset of the applicable Loan Party to such Permitted Royalty Transaction relating to the applicable product that is the subject of such Permitted Royalty Transaction so long as such Liens are subordinated to the Liens securing the Obligations pursuant to an intercreditor agreement on terms and conditions reasonably acceptable to the Required Lenders.

“**Permitted Refinancing**” is, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Term Loans and (c) if the Indebtedness being refinanced or replaced is secured, such Indebtedness is not secured by any assets other than the collateral securing the Indebtedness being refinanced or replaced.

“**Permitted Royalty Transaction**” is royalty financing or similar transaction (including any royalty sale or any synthetic royalty financing) that does not exceed ten percent (10%) of the net sales in respect of any product of the applicable Loan Party; provided, that at least one product of any Loan Party that has received the FDA approval for sales and marketing is not encumbered by any such Permitted Royalty Financing transaction then in effect. Borrower is required to present a financial plan to Collateral Agent prior to consummation of a Permitted Royalty Transaction.

“**Permitted Third Party Agreements**” are (x) any nonexclusive licenses granted in the ordinary course of business and not for purposes of commercializing any Intellectual Property (including for purposes of joint development, manufacturing, distribution, partnership or similar purposes, including any licensing transactions with contract research organizations or contract manufacturing organizations) and (y) any licenses, sublicenses and similar and customary arrangements for the use of Intellectual Property solely in connection with contract manufacturing, contract research, distribution, supplier and other similar arrangements that are entered into in the ordinary course of business and not in connection with any monetization or revenue-specific purpose and for which no Borrower or its Affiliates will receive any consideration (whether in the form of cash, equity or otherwise).

“**Person**” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Prime Rate**” is the Prime Rate published in The Wall Street Journal (or any successor publication if The Wall Street Journal is no longer published) in the “Money Rates” section (or such successor section).

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“**Prepayment Fee**” is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

(i) for a prepayment made on or after the Effective Date and through and including the date which is the first anniversary of the Effective Date, three percent (3.00%) of the principal amount of the Term Loans prepaid; provided, however, a prepayment may only be made on or prior to the first anniversary of the Effective Date pursuant to Section 2.2(c) (it being agreed and understood that no voluntary prepayment may be during such period);

(ii) for a prepayment made after the date which is the first anniversary of the Effective Date and through and including the date which is the second anniversary of the Effective Date, two percent (2.00%) of the principal amount of the Term Loans prepaid;

(iii) for a prepayment made after the date which is the second anniversary of the Effective Date through and including the date which is the third anniversary of the Effective Date, one percent (1.00%) of the principal amount of the Term Loan prepaid; and

(iv) for a prepayment made after the date which is the third anniversary of the Effective Date and prior to the Maturity Date, zero percent (0.00%) of the principal amount of the Term Loan prepaid.

“**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“**Pro Rata Share**” is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of the Term Loan held by such Lender by the aggregate outstanding principal amount of the Term Loan.

“**Registered Organization**” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**Registration**” means any registration, authorization, approval, license, permit, clearance, certificate, and exemption issued or allowed by the FDA or state pharmacy licensing authorities (including, without limitation, new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals, registrations and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits).

“**Related Persons**” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

“**Required Lenders**” means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an “**Original Lender**”) have not assigned or transferred any of their interests in the Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least fifty one percent (51%) of the aggregate outstanding principal balance of the Term Loan.

“**Requirement of Law**” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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“**Responsible Officer**” is any of the President, Chief Executive Officer or Chief Financial Officer of Borrower acting alone.

“**Secured Promissory Note**” is defined in Section 2.6.

“**Secured Promissory Note Record**” is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

“**Securities Account**” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**Solvent**” is, with respect to any Person: the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature in the ordinary course (without taking into account any forbearance and extensions related thereto).

“**Stock Purchase Agreement**” is that certain stock purchase agreement, dated as of the Effective Date, by and between the Parent and Collateral Agent.

“**Subordinated Debt**” is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

“**Subsidiary**” is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries. Unless otherwise specified, references herein to a Subsidiary means a Subsidiary of Borrower.

“**Term Loan Commitment**” is, for any Lender, the obligation of such Lender to make the Term Loan, up to the principal amount shown on Schedule 1.1. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**Term B Draw Period**” is the period commencing on the later of (i) the first date on which Borrower achieves the Term B Milestone and (ii) November 1, 2022 and ending on the earlier of (i) June 30, 2024 and (ii) the occurrence of an Event of Default (unless such Event of Default is waived by Collateral Agent and Lenders for the purposes of the continuation of the Term B Draw Period).

“**Term B Milestone**” [***]

“**Term C Draw Period**” is the period commencing on the later of (i) the first date on which Borrower achieves the Term C Milestone and (ii) November 1, 2022 and ending on the earlier of (i) June 30, 2024 and (ii) the occurrence of an Event of Default (unless such Event of Default is waived by Collateral Agent and Lenders for the purposes of the continuation of the Term C Draw Period).

“**Term C Milestone**” [***]

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower and each of its Subsidiaries connected with and symbolized by such trademarks.

“**TTM Revenue**” means trailing twelve (12) months aggregate consolidated revenue of Borrower and its Subsidiaries, determined in accordance with GAAP, as of any date of determination.

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“UCC” means Uniform Commercial Code as in effect from time to time in the State of New York; provided, if by reason of mandatory provisions of Law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of the Collateral Agent in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

EIGER BIOPHARMACEUTICALS, INC.

By /s/ David A. Cory
Name: David A. Cory
Title: President

EB PHARMA, LLC

By /s/ David A. Cory
Name: David A. Cory
Title: President

EBPI MERGER, INC.

By /s/ David A. Cory
Name: David A. Cory
Title: President

COLLATERAL AGENT AND LENDER:

INNOVATUS LIFE SCIENCES LENDING FUND I, LP

By: Innovatus Life Sciences GP, LP
Its: General Partner

By /s/ Andrew Hobson
Name: Andrew Hobson
Title: Authorized Signatory

[Signature Page to Loan and Security Agreement]

SCHEDULE 1.1

Lenders and Commitments

Term A Loan

<u>Lender</u>	<u>Term Loan A Commitment</u>	<u>Commitment Percentage</u>
INNOVATUS LIFE SCIENCES LENDING FUND I, LP	\$ 40,000,000	100.00%
TOTAL	<u>\$ 40,000,000</u>	<u>100.00%</u>

Term B Loan

<u>Lender</u>	<u>Term Loan B Commitment</u>	<u>Commitment Percentage</u>
INNOVATUS LIFE SCIENCES LENDING FUND I, LP	\$ 17,500,000	100.00%
TOTAL	<u>\$ 17,500,000</u>	<u>100.00%</u>

Term C Loan

<u>Lender</u>	<u>Term Loan C Commitment</u>	<u>Commitment Percentage</u>
INNOVATUS LIFE SCIENCES LENDING FUND I, LP	\$ 17,500,000	100.00%
TOTAL	<u>\$ 17,500,000</u>	<u>100.00%</u>

EXHIBIT A

Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any of the following assets (collectively, the "**Excluded Assets**"):

- (i) any Excluded Accounts;
- (ii) more than 65% of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "**Shares**") of any Foreign Subsidiary, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code;
- (iii) any leases, licenses, permits or agreements to the extent that, and so long as, a grant of a security interest therein, or in the property or assets that secure the underlying obligations with respect thereto (a) is prohibited by applicable law other than to the extent such prohibition is rendered ineffective under the UCC or other applicable law notwithstanding such prohibition or (b) would violate or invalidate such lease, license, permit or agreement with respect to any Intellectual Property, or create a right of termination in favor of, or require the consent of, any other party thereto, other than the proceeds thereof, and only for so long as such limitation on such pledge or security interest is subject to the limitations described above; and
- (iv) any motor vehicles and other assets subject to certificates of title and letter of credit rights, to the extent a Lien therein cannot be perfected by the filing of a UCC financing statement.

EXHIBIT B-1

Loan Payment Request Form

Fax To:

Date: _____

LOAN PAYMENT:

EIGER BIOPHARMACEUTICALS, INC.
EB PHARMA, LLC, EBPI MERGER, INC.

From Account # _____ To Account # _____
(Deposit Account #) (Loan Account #)

Principal \$ _____ and/or Interest \$ _____

Authorized Signature: _____ Phone Number: _____
Print Name/Title: _____

LOAN ADVANCE:

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # _____ To Account # _____
(Loan Account #) (Deposit Account #)

Amount of Advance \$ _____

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature: _____ Phone Number: _____
Print Name/Title: _____

OUTGOING WIRE REQUEST:

Complete only if all or a portion of funds from the loan advance above is to be wired.

Beneficiary Name: _____ Amount of Wire: \$ _____
Beneficiary Bank: _____ Account Number: _____
City and State: _____

Beneficiary Bank Transit (ABA) #: _____ Beneficiary Bank Code (Swift, Sort, Chip, etc.): _____
(For International Wire Only)

Intermediary Bank: _____ Transit (ABA) #: _____
For Further Credit to: _____

Special Instruction: _____
By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: _____ 2nd Signature (if required): _____
Print Name/Title: _____ Print Name/Title: _____
Telephone #: _____ Telephone #: _____]

EXHIBIT B-2

Form of Disbursement Letter

[see attached]

DISBURSEMENT LETTER

[DATE]

The undersigned, being the duly elected and acting _____ of EIGER BIOPHARMACEUTICALS, INC., a Delaware corporation (“**Borrower**”), does hereby certify, on behalf of all Borrowers, to **INNOVATUS LIFE SCIENCES LENDING FUND I, LP** (“**Innovatus**” and “**Lender**”), as collateral agent (the “**Collateral Agent**”) in connection with that certain Loan and Security Agreement dated as of June 1, 2022, by and among Borrower and other borrowers party thereto, Collateral Agent and the Lenders from time to time party thereto (the “**Loan Agreement**”; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof (provided that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date).

2. No event or condition has occurred and is continuing that would constitute an Event of Default under the Loan Agreement or any other Loan Document.

3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.

4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied or waived by Collateral Agent.

5. No Material Adverse Change has occurred.

6. The undersigned is a Responsible Officer.

[Balance of Page Intentionally Left Blank]

7. The proceeds of the Term A Loan shall be disbursed as follows: [***]

8. The Term A Loan shall amortize in accordance with the Loan Interest Rate And Payment Of Principal schedule attached as Annex Y (as amended or restated from time to time) to the Loan Agreement.

9. The aggregate net proceeds of the Term A Loan shall be transferred to the Designated Deposit Account as follows:

Account Name:	EIGER BIOPHARMACEUTICALS, INC.
Bank Name:	[***]
Bank Address:	[***] [***]
Credit Account Number:	[***]
Routing Number:	[***]

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* Legal fees and costs are through the Effective Date. Post-closing legal fees and costs, payable after the Effective Date, to be invoiced and paid post-closing.

Dated as of the date first set forth above.

BORROWER:

EIGER BIOPHARMACEUTICALS, INC., on behalf of all
Borrowers

By _____
Name: _____
Title: _____

COLLATERAL AGENT AND LENDER:

INNOVATUS LIFE SCIENCES LENDING FUND I, LP

By: Innovatus Life Sciences GP, LP
Its: General Partner

By _____
Name: _____
Title: _____

[Signature Page to Disbursement Letter]

EXHIBIT C

Compliance Certificate

TO: INNOVATUS LIFE SCIENCES LENDING FUND I, LP, as Collateral Agent and Lender

FROM: EIGER BIOPHARMACEUTICALS, INC., on behalf of all Borrowers

The undersigned authorized officer (“**Officer**”) of EIGER BIOPHARMACEUTICALS, INC. (“**Borrower**”), hereby certifies on behalf of all Borrowers that in accordance with the terms and conditions of the Loan and Security Agreement dated as of June 1, 2022, by and among Borrower and other borrowers party thereto, Collateral Agent, and the Lenders from time to time party thereto (the “**Loan Agreement**,” capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below;

(b) There are no Defaults or Events of Default that have occurred and are continuing, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower’s Subsidiaries, has timely filed, or filed for extensions, all required tax returns and reports, Borrower, and each of Borrower’s Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under “Complies” column.

<u>Reporting Covenant</u>	<u>Requirement</u>	<u>Actual</u>	<u>Complies</u>		
1) Financial statements	Quarterly within 45 days or within 10 days following the filing of Borrower's 10-Q, if earlier		Yes	No	N/A
2) Annual (CPA Audited) statements	Within 90 days after FYE		Yes	No	N/A
3) Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within earlier 10 days of approval or 45 days of FYE), and when revised (no later than 10 days of approval)		Yes	No	N/A
4) 8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing		Yes	No	N/A
5) Month-end Collateral Account statements	Monthly within 30 days		Yes	No	N/A
6) Compliance Certificate	Within 10 days following the filing of Borrower's 10-Q		Yes	No	N/A
7) Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A
8) Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A
19) Loan confirmation submitted to the fund administrator for Innovatus Life Sciences Lending Fund I, LP (see Exhibit C-2 to the Loan Agreement)	Quarterly within 45 days		Yes	No	N/A
20) IP Report	When require		Yes	No	N/A

Negative Covenant Compliance

	Negative Covenant	Complies		
1) Dispositions (§ 7.1)		Yes	No	N/A
2) Changes in Business, Management, Ownership, or Business Locations (§ 7.2)		Yes	No	N/A
3) Mergers or Acquisitions (§ 7.3)		Yes	No	N/A
4) Indebtedness (§ 7.4)		Yes	No	N/A
5) Encumbrance (§ 7.5)		Yes	No	N/A
6) Maintenance of Collateral Accounts (§ 7.6)		Yes	No	N/A
7) Restricted Payments (§ 7.7)		Yes	No	N/A
8) Investments (§ 7.8)		Yes	No	N/A
9) Transactions with Affiliates (§ 7.9)		Yes	No	N/A
10) Subordinated Debt (§ 7.10)		Yes	No	N/A
11) Compliance (§ 7.11)		Yes	No	N/A
12) Compliance with Anti-Terrorism Laws (§ 7.12)		Yes	No	N/A

Please attach supporting documentation and calculations for the below financial covenants.

Covenant	Requirement	Actual	Complies		
1) Minimum TTM Net Revenue ¹	Set forth in Section 6.12	\$ _____	Yes	No	N/A
2) Minimum Cash Balance	Set forth in Section 6.13	\$ _____	Yes	No	N/A

Deposit and Securities Accounts

(Please list all accounts; attach separate sheet if additional space needed)

	Institution Name	Account Number	New Account?		Account Control Agreement in place?	
			Yes	No	Yes	No
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No

¹ Beginning on the 3rd anniversary of the Effective date, N/A for all periods prior to then or during a covenant relaxation period as set forth in section 6.12(b).

Other Matters

- | | | |
|---|-----|----|
| 1) Have there been any changes in any Key Person since the last Compliance Certificate? | Yes | No |
| 2) Have there been any transfers/sales/disposals/retirement of Collateral prohibited by the Loan Agreement? | Yes | No |
| 3) Have there been any new or pending claims or causes of action against Borrower that involve more than Five Hundred Thousand Dollars (\$500,000.00)? | Yes | No |
| 4) Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate. | Yes | No |
| 5) Has Borrower provided the Collateral Agent with all notices required to be delivered under Sections 6.2(a) and 6.2(b) of the Loan Agreement? | Yes | No |
| 6) Have there been any material updates to the contents of the Perfection Certificate last delivered? If yes, please explain. | Yes | No |
| 7) Since the last Compliance Certificate, do you anticipate any impending product shortages or supply chain disruptions? If yes, please explain. | Yes | No |
| 8) Are there major components from suppliers that are single sourced? If yes, please explain. | Yes | No |
| 10) Have there been any changes to insurance policies providing coverage for business interruption since the last Compliance Certificate? If yes, please explain. | Yes | No |
| 11) Has Borrower or any Subsidiary terminated a Material Agreement? | Yes | No |

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

EIGER BIOPHARMACEUTICALS, INC., on behalf of all
Borrowers

By: _____

Name: _____

Title: _____

Date: _____

COLLATERAL AGENT USE ONLY

Received by: _____ Date: _____

Verified by: _____ Date: _____

Compliance Status: Yes No

[Signature Page to Compliance Certificate]

Exhibit A

Supporting documentation for Revenue Target

[Signature Page to Compliance Certificate]

Exhibit C-2
Loan Confirmation

In accordance with the loan documents, Innovatus Life Sciences Lending Fund I, LP and Innovatus Life Sciences Offshore Fund I-A, LP (collectively, the "Funds"), managed by Innovatus Capital Partners, LLC, please complete the information below on a quarterly basis and sign and date this confirmation. Please then send directly to the Funds administrator, HedgeServ Corporation., the following information related to the Funds' total investment in EIGER BIOPHARMACEUTICALS, INC., a Delaware corporation, EB Pharma, LLC, a Delaware limited liability company and EBPI Merger, Inc.:

- 1) Please provide the following information as it relates to the Funds (Include: Date, Loan Description, Principal Outstanding): Please see table below

<u>Date – For the Quarter Ended</u>	<u>Loan Description</u>	<u>Principal Outstanding</u>
Total		

Please sign, date, and email a copy of your response to HedgeServ at [***] and copy [***] no later than 30 days after quarter end.

CONFIRMATION:

Signature: _____

Print Name: _____

Title: _____

Date: _____

Phone: _____

EXHIBIT D

Form of Secured Promissory Note

[see attached]

SECURED PROMISSORY NOTE
(Term [A][B][C] Loan)

\$ _____

Dated: [DATE]

FOR VALUE RECEIVED, the undersigned, EIGER BIOPHARMACEUTICALS, INC., a Delaware corporation (“**Parent**”), EB Pharma, LLC, a Delaware limited liability company (“**EB Pharma**”) and EBPI Merger, Inc., a Delaware corporation (“**EBPI**”), each with offices located at 2155 Park Blvd., Palo Alto, CA 94306 (Parent, EB Pharma and EBPI, individually and collectively, jointly and severally, “**Borrower**”) HEREBY PROMISES TO PAY to the order of INNOVATUS LIFE SCIENCES LENDING FUND I, LP (“**Lender**”) the principal amount of [_____] MILLION DOLLARS (\$ _____) or such lesser amount as shall equal the outstanding principal balance of the Term [A][B][C] Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term [A][B][C] Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated [DATE] by and among Borrower, Lender, INNOVATUS LIFE SCIENCES LENDING FUND I, LP, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term [A][B][C] Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this “**Note**”). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term [A][B][C] Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term [A][B][C] Loan, interest on the Term [A][B][C] Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement and other applicable Loan Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable and documented, attorneys’ fees and expenses, including, without limitation, reasonable attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due, as limited in the Loan Agreement and other applicable Loan Documents.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

EIGER BIOPHARMACEUTICALS, INC.
EB PHARMA, LLC
EBPI MERGER, INC.

By _____
Name: _____
Title: _____

[Signature Page to Secured Promissory Note]

CORPORATE BORROWING CERTIFICATE

BORROWER: [Borrower] **DATE:** [DATE]
LENDER: INNOVATUS LIFE SCIENCES LENDING FUND I, LP, as Collateral Agent and Lender

I hereby certify as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.
2. Borrower's exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of Delaware.
3. Attached hereto as Exhibit A and Exhibit B, respectively, are true, correct and complete copies of (i) Borrower's Articles/Certificate of Incorporation/Certificate of Formation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 2 above; and (ii) Borrower's Bylaws/Limited Liability Company Agreement. Neither such Articles/Certificate of Incorporation/Certificate of Formation nor such Bylaws/Limited Liability Company Agreement have been amended, annulled, rescinded, revoked or supplemented, and such Articles/Certificate of Incorporation/Certificate of Formation and such Bylaws/Limited Liability Company Agreement remain in full force and effect as of the date hereof.
4. The following resolutions were duly and validly adopted by Borrower's Board of Directors/Managers at a duly held meeting of such directors/managers (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, and the Lenders may rely on them until each Lender receives written notice of revocation from Borrower.

[Balance of Page Intentionally Left Blank]

RESOLVED, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

Name	Title	Signature	Authorized to Add or Remove Signatories
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

RESOLVED FURTHER, that **any one** of the persons designated above with a checked box beside his or her name may, from time to time, add or remove any individuals to and from the above list of persons authorized to act on behalf of Borrower.

RESOLVED FURTHER, that such individuals may, on behalf of Borrower:

Borrow Money. Borrow money from the Lenders.

Execute Loan Documents. Execute any loan documents any Lender requires.

Grant Security. Grant Collateral Agent a security interest in any of Borrower's assets.

Negotiate Items. Negotiate or discount all drafts, trade acceptances, promissory notes, or other indebtedness in which Borrower has an interest and receive cash or otherwise use the proceeds.

Further Acts. Designate other individuals to request advances, pay fees and costs and execute other documents or agreements (including documents or agreement that waive Borrower's right to a jury trial) they believe to be necessary to effectuate such resolutions.

RESOLVED FURTHER, that all acts authorized by the above resolutions and any prior acts relating thereto are ratified.

[Balance of Page Intentionally Left Blank]

5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

By: _____
Name: _____
Title: _____

**** If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the _____ of Borrower, hereby certify as to paragraphs 1 through 5 above, as
[print title]
of the date set forth above.

By: _____
Name: _____
Title: _____

[Signature Page to Corporate Borrowing Certificate]

EXHIBIT A

Articles/Certificate of Incorporation (including amendments)

[see attached]

EXHIBIT B

Bylaws

[see attached]

ANNEX I

Collateral Agent and Lender Terms

1. Appointment of Collateral Agent.

(a) Each Lender hereby appoints INNOVATUS LIFE SCIENCES LENDING FUND I, LP (together with any successor Collateral Agent pursuant to Section 7 of this Annex I) as Collateral Agent under the Loan Documents and authorizes Collateral Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from Borrower, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Collateral Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, Collateral 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 other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Collateral Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of Collateral Agent and Lenders with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Lender), (iii) act as collateral agent for Collateral Agent and each Lender for purposes of the perfection of all Liens created by the Loan Documents 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 Collateral Agent and the other Lenders with respect to the Borrower and/or the Collateral, whether under the Loan Documents, applicable Requirements of Law 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, however, that Collateral Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Collateral Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any Deposit Account maintained by Borrower 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 Collateral Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed. Collateral 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 Lender). Any such Person shall benefit from this Annex I to the extent provided by Collateral Agent.

(c) Under the Loan Documents, Collateral Agent (i) is acting solely on behalf of the Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Collateral Agent", the terms "agent", "Collateral Agent" and "collateral agent" and similar terms in any Loan Document to refer to Collateral 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 Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Collateral Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Except as expressly set forth in the Loan Documents, Collateral Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by [LENDER 2] or any of its Affiliates in any capacity.

2. Binding Effect; Use of Discretion; E-Systems.

(a) Each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Collateral Agent or Required Lenders (or, if expressly required in any Loan Document, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Collateral Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Collateral Agent or Required 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 Lenders.

(b) If Collateral Agent shall request instructions from Required Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with any Loan Document, then Collateral Agent shall be entitled to refrain from such act or taking such action unless and until Collateral Agent shall have received instructions from Required Lenders or all affected Lenders, as the case may be, and Collateral Agent shall not incur liability to any Person by reason of so refraining. Collateral Agent shall be fully justified in failing or refusing to take any action under any Loan Document (i) if such action would, in the opinion of Collateral Agent, be contrary to any Requirement of Law or any Loan Document, (ii) if such action would, in the opinion of Collateral Agent, expose Collateral Agent to any potential liability under any Requirement of Law or (iii) if Collateral Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent acting or refraining from acting under any Loan Document in accordance with the instructions of Required Lenders or all affected Lenders, as applicable.

(c) Collateral Agent is hereby authorized by Borrower and each Lender to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Term Loan and other matters incidental thereto. Without limiting the generality of the foregoing, Collateral Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents (including, without limitation, borrowing base certificates) and similar items on, by posting to or submitting and/or completion, on E-Systems. Borrower and each Lender acknowledges and agrees that the use of transmissions via an E-System or electronic mail is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse, and Borrower and each Lender assumes and accepts such risks by hereby authorizing the transmission via E-Systems or electronic mail. Each "e-signature" on any such posting shall be deemed sufficient to satisfy any requirement for a "signature", and each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any Code, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter. All uses of an E-System shall be governed by and subject to, in addition to this Section, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related contractual obligations executed by Collateral Agent, Borrower and/or Lenders in connection with the use of such E-System. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED "AS IS" AND "AS AVAILABLE". NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS.

3. Collateral Agent's Reliance, Etc. Collateral Agent may, without incurring any liability hereunder, (a) 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, Borrower) and (b) rely and act upon any document and information (including those transmitted by electronic transmission) 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. None of Collateral Agent and 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 Borrower hereby waives and shall not assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment of a court of competent jurisdiction) in connection with the duties of Collateral Agent expressly set forth herein. Without limiting the foregoing, Collateral Agent: (i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons, except to the extent that a court of competent jurisdiction determines in a final non-appealable judgment that Collateral Agent acted with gross

negligence or willful misconduct in the selection of such Related Person; (ii) shall not be responsible to any Lender or other Person 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 Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of Borrower or any Related Person of Borrower in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to Borrower, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Collateral Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Collateral 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 Borrower or as to the existence or continuation or possible occurrence or continuation of any 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 Borrower or any Lender describing such Event of Default that is clearly labeled "notice of default" (in which case Collateral Agent shall promptly give notice of such receipt to all Lenders, provided that Collateral Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Collateral Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction); and, for each of the items set forth in clauses (i) through (iv) above, each Lender and Borrower hereby waives and agrees not to assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action it might have against Collateral Agent based thereon.

4. Collateral Agent Individually. Collateral 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, Borrower or any Affiliate of Borrower as though it were not acting as Collateral Agent and may receive separate fees and other payments therefor. To the extent Collateral Agent or any of its Affiliates makes the Term 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", "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Collateral Agent or such Affiliate, as the case may be, in its individual capacity as Lender, or as one of the Required Lenders.

5. Lender Credit Decision; Collateral Agent Report. Each Lender acknowledges that it shall, independently and without reliance upon Collateral Agent, any Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Collateral Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of Borrower and make and continue 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. Except for documents expressly required by any Loan Document to be transmitted by Collateral Agent to the Lenders, Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of Borrower or any Affiliate of Borrower that may come in to the possession of Collateral Agent or any of its Related Persons. Each Lender agrees that it shall not rely on any field examination, audit or other report provided by Collateral Agent or its Related Persons (a "Collateral Agent Report"). Each Lender further acknowledges that any Collateral Agent Report (a) is provided to the Lenders solely as a courtesy, without consideration, and based upon the understanding that such Lender will not rely on such Collateral Agent Report, (b) was prepared by Collateral Agent or its Related Persons based upon information provided by Borrower solely for Collateral Agent's own internal use, and (c) may not be complete and may not reflect all information and findings obtained by Collateral Agent or its Related Persons regarding the operations and condition of Borrower. Neither Collateral Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (i) any existing or proposed financing, (ii) the accuracy or completeness of the information contained in any Collateral Agent Report or in any related documentation, (iii) the scope or adequacy of Collateral Agent's and its Related Persons' due diligence, or the presence or absence of any errors or omissions contained in any Collateral Agent Report or in any related documentation, and (iv) any work performed by Collateral Agent or Collateral Agent's Related Persons in connection with or using any Collateral

Agent Report or any related documentation. Neither Collateral Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Collateral Agent Report. Without limiting the generality of the forgoing, neither Collateral Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Collateral Agent Report, or the appropriateness of any Collateral Agent Report for any Lender's purposes, and shall have no duty or responsibility to correct or update any Collateral Agent Report or disclose to any Lender any other information not embodied in any Collateral Agent Report, including any supplemental information obtained after the date of any Collateral Agent Report. Each Lender releases, and agrees that it will not assert, any claim against Collateral Agent or its Related Persons that in any way relates to any Collateral Agent Report or arises out of any Lender having access to any Collateral Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Collateral Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender's access to any Collateral Agent Report or any discussion of its contents.

6. Indemnification. Each Lender agrees to reimburse Collateral Agent and each of its Related Persons (to the extent not reimbursed by Borrower as required under the Loan Documents) promptly upon demand for its Pro Rata Share of any costs and expenses (including, without limitation, fees, charges and disbursements of financial, legal and other advisors and any taxes or insurance paid in the name of, or on behalf of, Borrower) incurred by Collateral Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, amendment, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Loan Document. Each Lender further agrees to indemnify Collateral Agent and each of its Related Persons (to the extent not reimbursed by Borrower as required under the Loan Documents), ratably according to its Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, to the extent not indemnified by the applicable Lender, 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 Collateral 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 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 Collateral Agent or any of its Related Persons under or with respect to the foregoing; provided that no Lender shall be liable to Collateral Agent or any of its Related Persons under this Section 6 of this Annex I to the extent such liability has resulted from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent required by any applicable Requirement of Law, Collateral Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that Collateral Agent did not properly withhold tax from amounts paid to or for the account of any Lender for any reason, or if Collateral Agent reasonably determines that it was required to withhold taxes from a prior payment to or for the account of any Lender but failed to do so, such Lender shall promptly indemnify Collateral Agent fully for all amounts paid, directly or indirectly, by Collateral Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by Collateral Agent. Collateral Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Collateral Agent is entitled to indemnification from such Lender under the immediately preceding sentence of this Section 6 of this Annex I.

7. Successor Collateral Agent. Collateral Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective, in accordance with the terms of this Section 7 of this Annex I. If Collateral Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Collateral Agent. If, after 30 days after the date of the retiring Collateral Agent's notice of resignation, no successor Collateral Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent from among the Lenders. Effective immediately upon its resignation, (a) the retiring Collateral Agent shall be discharged from its duties and obligations under the Loan Documents, (b) the Lenders shall assume and perform all of the duties of

Collateral Agent until a successor Collateral Agent shall have accepted a valid appointment hereunder, (c) the retiring Collateral Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Collateral Agent was, or because such Collateral Agent had been, validly acting as Collateral Agent under the Loan Documents, and (iv) subject to its rights under Section 2(b) of this Annex I, the retiring Collateral Agent shall take such action as may be reasonably necessary to assign to the successor Collateral Agent its rights as Collateral Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Collateral Agent, a successor Collateral Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Collateral Agent under the Loan Documents.

8. Release of Collateral. Each Lender hereby consents to the release and hereby directs Collateral Agent to release (or in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Guarantor or Subsidiary “co-Borrower” if all of the stock of such Subsidiary owned by Borrower is sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a valid waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to any Loan Document; and

(b) any Lien held by Collateral Agent for the benefit of itself and the Lenders against (i) any Collateral that is sold or otherwise disposed of by Borrower in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any Collateral subject to a Lien that is expressly permitted under clause (c) of the definition of the term “Permitted Lien” and (iii) all of the Collateral and Borrower, upon (A) termination of all of the Commitments, (B) payment in full in cash of all of the Obligations that Collateral Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable, and (C) to the extent requested by Collateral Agent, receipt by Collateral Agent and Lenders of liability releases from Borrower in form and substance acceptable to Collateral Agent (the satisfaction of the conditions in this clause (iii), the “**Termination Date**”).

9. Setoff and Sharing of Payments. In addition to any rights now or hereafter granted under any applicable requirement of law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 10(d) of this Annex I, each Lender is hereby authorized at any time or from time to time upon the direction of Collateral Agent, without notice to Borrower or any other Person, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower (regardless of whether such balances are then due to Borrower) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of Borrower against and on account of any of the Obligations that are not paid when due. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender’s or holder’s Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares of the Obligations. Borrower agrees, to the fullest extent permitted by law, that (a) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may purchase participations in accordance with the preceding sentence and (b) any Lender so purchasing a participation in the Term Loan made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers’ lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Term Loan and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

10. Advances; Payments; Non-Funding Lenders; Actions in Concert.

(a) Advances; Payments. If Collateral Agent receives any payment with respect to the Term Loan for the account of Lenders on or prior to 3:00 p.m. (New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender’s Pro Rata Share of such payment on such Business Day. If Collateral Agent receives any payment with respect to the Term Loan for the account of Lenders after 3:00 p.m.

(New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day.

(b) Return of Payments.

(i) If Collateral Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Collateral Agent from Borrower and such related payment is not received by Collateral Agent, then Collateral Agent will be entitled to recover such amount (including interest accruing on such amount at the rate otherwise applicable to such Obligation) from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Collateral Agent determines at any time that any amount received by Collateral Agent under any Loan Document must be returned to Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of any Loan Document, Collateral Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Collateral Agent on demand any portion of such amount that Collateral Agent has distributed to such Lender, together with interest at such rate, if any, as Collateral Agent is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind and Collateral Agent will be entitled to set off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(c) Non-Funding Lenders.

(i) Unless Collateral Agent shall have received notice from a Lender prior to the date of any Term Loan that such Lender will not make available to Collateral Agent such Lender's Pro Rata Share of such Term Loan, Collateral Agent may assume that such Lender will make such amount available to it on the date of such Term Loan in accordance with Section 2(b) of this Annex I, and Collateral Agent may (but shall not be obligated to), in reliance upon such assumption, make available a corresponding amount for the account of Borrower on such date. If and to the extent that such Lender shall not have made such amount available to Collateral Agent, such Lender and Borrower severally agree to repay to Collateral Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the day such amount is made available to Borrower until the day such amount is repaid to Collateral Agent, at a rate per annum equal to the interest rate applicable to the Obligation that would have been created when Collateral Agent made available such amount to Borrower had such Lender made a corresponding payment available. If such Lender shall repay such corresponding amount to Collateral Agent, the amount so repaid shall constitute such Lender's portion of such Term Loan for purposes of this Agreement.

(ii) To the extent that any Lender has failed to fund any Term Loan or any other payments required to be made by it under the Loan Documents after any such Term Loan is required to be made or such payment is due (a "**Non-Funding Lender**"), Collateral Agent shall be entitled to set off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower. The failure of any Non-Funding Lender to make any Term Loan or any payment required by it hereunder shall not relieve any other Lender (each such other Lender, an "**Other Lender**") of its obligations to make such Term Loan, but neither any Other Lender nor Collateral Agent shall be responsible for the failure of any Non-Funding Lender to make such Term Loan or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be included in the calculation of "Required Lender" hereunder) for any voting or consent rights under or with respect to any Loan Document. At Borrower's request, Collateral Agent or a Person reasonably acceptable to Collateral Agent shall have the right with Collateral Agent's consent and in Collateral Agent's sole discretion (but Collateral Agent or any such Person shall have no obligation) to purchase from any Non-Funding Lender, and each Lender agrees that if it becomes a Non-Funding Lender it shall, at Collateral Agent's request, sell and assign to Collateral Agent or such Person, all of the Term Loan Commitment (if any), and all of the outstanding Term Loan of that Non-Funding Lender for an amount equal to the aggregate outstanding principal balance of the Term Loan held by such Non-Funding Lender and all accrued interest with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed assignment agreement in form and substance reasonably satisfactory to, and acknowledged by, Collateral Agent.

(d) Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of any Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Collateral Agent or Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under any Loan Document shall be taken in concert and at the direction or with the consent of Collateral Agent or Required Lenders.

ANNEX Y

LOAN INTEREST RATE AND PAYMENT OF PRINCIPAL
(Term Loan)

PLEASE SEE ATTACHED

**EIGER BIOPHARMACEUTICALS, INC.
COMMON STOCK PURCHASE AGREEMENT**

THIS COMMON STOCK PURCHASE AGREEMENT (the “**Agreement**”) is made as of June 1, 2022 (the “**Execution Date**”) by and among Eiger BioPharmaceuticals, Inc., a Delaware corporation (the “**Company**”), and each purchaser identified on the signature pages hereto (each an “**Investor**,” and collectively the “**Investors**”).

RECITALS

WHEREAS, the Company and each of the Investors, severally and not jointly, are executing and delivering this Agreement in connection with that certain Loan and Security Agreement, dated as of even date herewith, by and among the Company, EB Pharma, LLC, EBPI Merger, Inc., Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent and a Lender, and the lenders listed on Schedule 1.1 thereto (the “**Loan Agreement**”).

WHEREAS, pursuant to terms set forth in this Agreement, the Company desires to sell to each Investor, and each Investor desires to purchase from the Company, an aggregate of Five Million Dollars (\$5,000,000) shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”) at the per share purchase price (the “**Per Share Purchase Price**”) set forth on Schedule I hereto.

WHEREAS, all terms not defined herein shall have the meaning set forth for such terms in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement and the Loan Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1
Purchase and Sale of Shares**

1.1 **Sale of Shares**. Subject to the terms and conditions hereof, the Company will issue and sell to each Investor, and each Investor, severally and not jointly, will purchase from the Company, an aggregate of 749,053 shares of Common Stock (the “**Shares**”) at the Per Share Purchase Price. The number of Shares to be purchased by each Investor and the aggregate purchase price to be paid by each Investor (the “**Purchase Price**”) is set forth on Schedule I hereto.

1.2 **Closing**. The purchase and sale of the Shares shall take place at a closing (the “**Closing**”) to be held remotely via the exchange of documents and signatures, on the second trading day following the Execution Date, or such other time as agreed by the parties (the “**Closing Date**”). At the Closing, the Company will deliver or cause to be delivered to each Investor a certificate(s) or book-entry shares, at the Investor’s option, representing such Investor’s Shares and, concurrently, each Investor shall pay its Purchase Price by wire transfer of immediately available funds to the Company in accordance with the Company’s written wire instructions provided in writing to the Investors at least one Business Day prior to the Closing.

SECTION 2
Representations and Warranties of the Company

The Company hereby represents and warrants to each Investor the following as of the date hereof and as of the Closing Date:

2.1 *Organization and Good Standing and Qualifications.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease, operate and occupy its properties and to carry on its business as now being conducted. Except as set forth in the Commission Documents (as defined below), the Company does not own more than 50% of the outstanding capital stock of or control any other business entity, except EB Pharma, LLC, a Delaware limited liability company and EBPI Merger, Inc., a Delaware corporation. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted or property owned or leased by it makes such qualification necessary, other than those in which the failure so to qualify or be in good standing would not have a Material Adverse Effect. For purposes of this Agreement, “**Material Adverse Effect**” shall mean: (i) any event or condition that would reasonably be expected to have a material adverse effect on the business, operations, properties or financial condition of the Company and its Subsidiaries, taken as a whole; provided, that none of the following shall be deemed to constitute a “Material Adverse Effect” with respect to the foregoing clause (i): (A) the effects of conditions or events that are generally applicable to the capital, financial, banking or currency markets or to the biotechnology industry, or (B) changes in the market price of the Common Stock; or (ii) the authority or ability of the Company to perform its obligations under this Agreement.

2.2 *Authorization.* The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement; the execution and delivery of this Agreement by the Company, the consummation by the Company of the transactions contemplated hereby and the issuance, sale and delivery of the Shares have been duly authorized by all necessary corporate action, and no further consent or authorization of the Company, its Board of Directors or its stockholders is required; and this Agreement has been duly executed and delivered and constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, securities, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors’ rights and remedies, or indemnification or by other equitable principles of general application.

2.3 *Valid Issuance of Shares.* The issuance of the Shares has been duly authorized by all requisite corporate action. When the Shares are issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, the Shares will be duly and validly issued and outstanding, fully paid, and nonassessable, and will be free of all liens, encumbrances and restrictions, other than the restrictions on transfer set forth in Section 6.1 and under applicable state and federal securities laws and, except as otherwise set forth herein, each Investor shall be entitled to all rights accorded to a holder of shares of Common Stock. The Company has reserved a sufficient number of shares of Common Stock for issuance to the Investors in accordance with the Company’s obligations under this Agreement.

2.4 *No Conflict.* The execution, delivery and performance of this Agreement, and any other document or instrument contemplated hereby, by the Company and the consummation by the Company of the transactions contemplated hereby, do not: (i) violate any provision of the Company’s Certificate of Incorporation or Bylaws, (ii) conflict with, or constitute a default (or an event which with notice or lapse

of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company is a party, where such default or conflict would constitute a Material Adverse Effect, (iii) create or impose a lien, charge or encumbrance on any property of the Company under any agreement or any commitment to which the Company is a party or by which the Company is bound, which would constitute a Material Adverse Effect, (iv) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, writ, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or assets of the Company are bound or affected, where such violation would constitute a Material Adverse Effect, or (v) require any consent of any third-party that has not been obtained pursuant to any material contract to which the Company is subject or to which any of its assets, operations or management may be subject, where the failure to obtain any such consent would constitute a Material Adverse Effect. The Company is not required under federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under this Agreement or issue and sell the Shares in accordance with the terms hereof (other than any filings that may be required to be made by the Company with the Securities and Exchange Commission (the “**Commission**”), the Financial Industry Regulatory Authority, The Nasdaq Stock Market LLC (the “**Nasdaq**”) or state securities commissions subsequent to the Closing); provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of the Investors herein.

2.5 Compliance. The Company is not, and the execution and delivery of this Agreement and the consummation of the transactions contemplated herewith will not cause the Company to be (i) in violation or default of any provision of any instrument, mortgage, deed of trust, loan, contract, or commitment filed with the Commission Documents, (ii) in violation of any provision of any judgment, decree, order or obligation to which it is a party or by which it or any of its properties or assets are bound, or (iii) in violation of any federal, state or, to its knowledge, local statute, rule or governmental regulation, in the case of each of clauses (i), (ii) and (iii), which would have a Material Adverse Effect.

2.6 Capitalization. As of May 2, 2022, the number of issued and outstanding shares of Common Stock was 43,216,126. The outstanding shares of capital stock of the Company as of the date hereof have been duly and validly issued and are fully paid and nonassessable, were not issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. Except as set forth in the Commission Documents, there are no outstanding rights (including, without limitation, preemptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any unissued shares of capital stock or other equity interest in the Company, or any contract, commitment, agreement, understanding or arrangement of any kind to which the Company is a party and relating to the issuance or sale of any capital stock of the Company, any such convertible or exchangeable securities or any such rights, warrants or options. Without limiting the foregoing, no preemptive right, co-sale right, right of first refusal, registration right, or other similar right exists with respect to the Shares or the issuance and sale thereof. Except as disclosed in the Commission Documents, there are no shareholder agreements, voting agreements or other similar agreements with respect to the voting of the Shares to which the Company is a party or, to the knowledge of the Company, between or among any of the Company’s shareholders.

2.7 Commission Documents, Financial Statements. The Company’s Common Stock is registered pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”). The Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Commission for the past twelve (12) months pursuant to the reporting requirements of the Exchange Act, including material filed pursuant to Section 13(a) or 15(d) of the Exchange Act (all of the foregoing, including filings incorporated by reference therein, being referred

to herein as the “**Commission Documents**”). The Common Stock is currently listed on the Nasdaq Global Market. The Company is not in violation of the listing requirements of the Nasdaq and has no knowledge of any facts that would reasonably lead to delisting or suspension of its common stock from Nasdaq in the foreseeable future. As of its date, each Commission Document complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder applicable to such document, and, as of its date, after giving effect to the information disclosed and incorporated by reference therein, no such Commission Document contained 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, in light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the Commission Documents complied as to form and substance in all material respects with applicable accounting requirements and the published rules and regulations of the Commission or other applicable rules and regulations with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“**GAAP**”) applied on a consistent basis during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements), and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

2.8 Internal Controls and Procedures. The Company maintains disclosure controls and procedures as such terms are defined in, and required by, Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act. Such disclosure controls and procedures are effective as of the latest date of management’s evaluation of such disclosure controls and procedures as set forth in the Commission Documents to ensure that all material information required to be disclosed by the Company in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Commission. The Company maintains a system of internal controls over financial reporting (as such term is defined in Exchange Act Rule 13a-15(f) and 15d-15(f)) that is designed to comply with the requirements of the Exchange Act and has been designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

2.9 Material Adverse Change. Except as disclosed in the Commission Documents, since March 31, 2022, no event or series of events has or have occurred that would, individually or in the aggregate, have a Material Adverse Effect.

2.10 No Undisclosed Liabilities. Neither the Company nor any of its subsidiaries has any liabilities, obligations, claims or losses (whether liquidated or unliquidated, secured or unsecured, absolute, accrued, contingent or otherwise) that would be required to be disclosed on a balance sheet of the Company or any of its subsidiaries (including the notes thereto) in conformity with GAAP and are not disclosed in the Commission Documents, other than those incurred in the ordinary course of the Company’s or its Subsidiaries’ respective businesses since March 31, 2022 or which, individually or in the aggregate, do not or would not reasonably be expected to have a Material Adverse Effect.

2.11 No Undisclosed Events or Circumstances. Except for the transactions contemplated by this Agreement and the Loan Agreement, no event or circumstance has occurred or exists with respect to the Company, its subsidiaries, or their respective businesses, properties, operations or financial condition, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed and which, individually or in the aggregate, would have a Material Adverse Effect.

2.12 Actions Pending. There is no action, suit, claim, investigation or proceeding pending or, to the knowledge of the Company, threatened against the Company or any Subsidiary which questions the validity of this Agreement or the transactions contemplated hereby or any action taken or to be taken pursuant hereto. Except as set forth in the Commission Documents or as otherwise disclosed in writing to an Investor in connection with the Loan Agreement, there is no action, suit, claim, investigation or proceeding pending or, to the knowledge of the Company, threatened, against or involving the Company, any Subsidiary, or any of their respective properties or assets that could be reasonably expected to have a Material Adverse Effect. Except as set forth in the Commission Documents or as otherwise disclosed pursuant to the Loan Agreement, no judgment, order, writ, injunction or decree or award has been issued by or, to the knowledge of the Company, requested of any court, arbitrator or governmental agency which would or would be reasonably expected to have a Material Adverse Effect.

2.13 Compliance with Law. The businesses of the Company and its Subsidiaries have been and are presently being conducted in accordance with all applicable federal, state and local governmental laws, rules, regulations and ordinances, except as set forth in the Commission Documents or such that would not reasonably be expected to have a Material Adverse Effect. Except as set forth in the Commission Documents, the Company and each of its Subsidiaries have all franchises, permits, licenses, consents and other governmental or regulatory authorizations and approvals necessary for the conduct of its respective business as now being conducted by it, except for such franchises, permits, licenses, consents and other governmental or regulatory authorizations and approvals, the failure to possess which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

2.14 Exemption from Registration, Valid Issuance. Subject to, and in reliance on, the representations, warranties and covenants made herein by the Investors, the issuance and sale of the Shares in accordance with the terms and on the bases of the representations and warranties set forth in this Agreement, may and shall be properly issued pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), Regulation D promulgated pursuant to the Securities Act (“**Regulation D**”) and/or any other applicable federal and state securities laws. The sale and issuance of the Shares pursuant to, and the Company’s performance of its obligations under, this Agreement will not (i) result in the creation or imposition of any liens, charges, claims or other encumbrances upon the Shares (other than as set forth in Section 6.1 or under applicable state and federal securities laws) or any of the assets of the Company, or (ii) entitle the holders of any outstanding shares of capital stock of the Company to preemptive or other rights to subscribe to or acquire the Shares or other securities of the Company. No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a “**Disqualification Event**”) is applicable to the Company or, to the Company’s knowledge, any Company Covered Person (as defined below), except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3), is applicable. “**Company Covered Person**” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the Securities Act, any person listed in the first paragraph of Rule 506(d)(1). The Company is not aware of any person (other than any Company Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of the Shares pursuant to this Agreement. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e).

2.15 Transfer Taxes. All stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Shares to be sold to Investors hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with.

2.16 Investment Company. The Company is not and, after giving effect to the offering and sale of the Shares, will not be an “investment company” as defined in the Investment Company Act of 1940, as amended.

2.17 **Shell Company.** The Company is not, and has never been, an issuer identified in Rule 144(i)(1) promulgated under the Securities Act.

2.18 **Brokers.** Except as expressly set forth in the Loan Agreement, no brokers, finders or financial advisory fees or commissions will be payable by the Company or any of its subsidiaries in respect of the transactions contemplated by this Agreement or the Loan Agreement.

SECTION 3 Representations and Warranties of the Investors

Each Investor hereby represents and warrants to the Company, severally and not jointly, the following as of the date hereof and as of the Closing Date:

3.1 **Experience.** Each Investor is experienced in evaluating companies such as the Company, has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of the Investor's prospective investment in the Company, and has the ability to bear the economic risks of its investment.

3.2 **Investment.** Each Investor is acquiring the Shares for investment for the Investor's own account and not with the view to, or for resale in connection with, any distribution thereof. Each Investor understands that the Shares have not been and will not be registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein. Each Investor further represents that it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation to any third person with respect to any of the Shares.

3.3 **Rule 144.** Each Investor acknowledges that the Shares must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available. Each Investor is aware of the provisions of Rule 144 promulgated under the Securities Act ("**Rule 144**") which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions. In connection therewith, each Investor acknowledges that the Company will make a notation on its stock books regarding the restrictions on transfers set forth in this Section 3 and will transfer the Shares on the books of the Company only to the extent not inconsistent therewith.

3.4 **Access to Information.** Each Investor has received and reviewed information about the Company and has had an opportunity to discuss the Company's business, management and financial affairs with its management and to review the Company's facilities. Each Investor has had a full opportunity to ask questions of and receive answers from the Company, or any person or persons acting on behalf of the Company, concerning the terms and conditions of an investment in the Shares. Each Investor is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, except for the statements, representations and warranties contained in this Agreement and the Loan Agreement.

3.5 **Authorization.** This Agreement when executed and delivered by each Investor will constitute a valid and legally binding obligation of the Investor, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, securities, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies, or indemnification or by other equitable principles of general application.

3.6 **Investor Status.** Each Investor acknowledges that it is an "accredited investor" as defined in Rule 501(a) of Regulation D, and each Investor shall submit to the Company such further assurances of such status as may be reasonably requested by the Company.

3.7 **No Inducement.** Each Investor was not induced to participate in the offer and sale of the Shares by the filing of any registration statement in connection with any public offering of the Company's securities, and the Investor's decision to purchase the Shares hereunder was not influenced by the information contained in any such registration statement.

SECTION 4 Conditions to Investors' Obligations at Closing

In addition to the conditions and deliverables set forth in Section 1.2, the obligations of each Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, any of which may be waived in writing by each Investor as to itself (except to the extent not permitted by law):

4.1 **No Injunction, etc.** No preliminary or permanent injunction or other binding order, decree or ruling issued by a court or governmental agency shall be in effect which shall have the effect of preventing the consummation of the transactions contemplated by this Agreement. No action or claim shall be pending before any court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling or charge would be reasonably likely to (i) prevent consummation of any of the transactions contemplated by this Agreement, (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation or (iii) have the effect of making illegal the purchase of, or payment for, any of the Shares by the Investor.

4.2 **Representations and Warranties.** The representations and warranties of the Company contained in Section 2 shall be true and correct as of the Closing Date.

4.3 **Performance.** The Company shall have performed and complied with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing Date.

4.4 **Compliance Certificate.** A duly authorized officer of the Company shall deliver to the Investors at the Closing a certificate stating that the conditions specified in Sections 4.2 and 4.3 have been fulfilled and certifying and attaching the Company's Certificate of Incorporation, Bylaws and resolutions of the Company's Board of Directors authorizing this Agreement, the Loan Agreement and the transactions contemplated hereby and thereby.

4.5 **Securities Laws.** The offer and sale of the Shares to the Investors pursuant to this Agreement shall be exempt from the registration requirements of the Securities Act and the registration and/or qualification requirements of all applicable state securities laws.

4.6 **Authorizations.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall have been duly obtained and shall be effective on and as of the Closing.

4.7 **Loan Agreement.** The Company shall have delivered to the Investors the duly executed Loan Agreement.

SECTION 5 Conditions to the Company's Obligations at Closing

The obligations of the Company under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, any of which may be waived in writing by the Company (except to the extent not permitted by law):

5.1 **Representations and Warranties.** The representations and warranties of each Investor contained in Section 3 shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality which shall be true and correct in all respects) on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing.

5.2 **Securities Law Compliance.** The offer and sale of the Shares to the Investors pursuant to this Agreement shall be exempt from the registration requirements of the Securities Act and the registration and/or qualification requirements of all applicable state securities laws.

5.3 **Authorizations.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall have been duly obtained and shall be effective on and as of the Closing.

5.4 **Loan Agreement.** The Investors that are party thereto shall have delivered to the Company the duly executed Loan Agreement.

SECTION 6 Investor Covenants

6.1 **Trading Restrictions.**

(a) **Definitions.** For purposes of this Section 6.1, the following terms shall have the meanings indicated:

(i) "**Affiliate**" shall have the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

(ii) "**Restriction Period**" shall mean the period commencing on the Closing Date and continuing until the date that is six (6) months from such date.

(iii) "**Significant Event**" shall mean any of the following not involving a violation of this Section 6.1: (A) the public announcement of a proposal or intention to acquire, or the acquisition, by any person or 13D Group of beneficial ownership of Voting Securities representing 15% or more of the then outstanding Voting Securities; (B) the public announcement of a proposal or intention to commence, or the commencement, by any person or 13D Group of a tender or exchange offer to acquire Voting Securities which, if successful, would result in such person or 13D Group owning, when combined with any other Voting Securities owned by such person or 13D Group, 15% or more of the then outstanding Voting Securities; or (C) the entry into by the Company, or the public announcement by the Company of an intention or determination to enter into, any merger, sale or other business combination transaction, or an agreement therefor, pursuant to which the outstanding shares of capital stock of the Company would be

converted into cash, other consideration or securities of another person or 13D Group or 50% or more of the then outstanding shares of capital stock of the Company would be owned by persons other than the then current holders of shares of capital stock of the Company, or which would result in all or a substantial portion of the Company's assets being sold to any person or 13D Group.

(iv) "**Voting Securities**" shall mean at any time shares of any class of capital stock of the Company which are then entitled to vote generally in the election of directors.

(v) "**13D Group**" shall mean, with respect to the Voting Securities of the Company, any group of persons formed for the purpose of acquiring, holding, voting or disposing of such Voting Securities which would be required under Section 13(d) of the Exchange Act and the rules and regulations thereunder to file a statement on Schedule 13D with the Commission as a "person" within the meaning of Section 13(d)(3) of the Exchange Act if such group beneficially owned Voting Securities representing more than 5% of the total combined voting power of all such Voting Securities then outstanding.

(b) Restriction Period No Sell. Each Investor agrees that during the Restriction Period, neither the Investor nor any of its Affiliates shall offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose of in any manner, either directly or indirectly, any Shares, or any securities of the Company issued as a dividend or distribution on, or involving a recapitalization or reorganization with respect to, such Shares (collectively, "**Covenant Shares**"), other than transfers of securities between and among the Investors and any one or more of their respective Affiliates. The Company shall use commercially reasonable efforts to permit the Shares to be eligible for clearance and settlement through the facilities of The Depository Trust Company immediately following the termination of the Restriction Period.

(c) Occurrence of Significant Event. The restrictions contained in Section 6.1(b) shall be suspended and shall not apply to or otherwise restrict an Investor's actions in respect of the Company's securities for so long as a Significant Event has occurred and is continuing.

6.2 Invalid Transfers. Any sale, assignment or other transfer of Covenant Shares by an Investor or any of its Affiliates, as applicable, contrary to the provisions of Section 6.1 shall be null and void, and the transferee shall not be recognized by the Company as the holder or owner of the Covenant Shares sold, assigned, or transferred for any purpose (including, without limitation, voting or dividend rights), unless otherwise permitted by Section 6.1 or consented to by the Company. With respect to any transfer permitted pursuant to Section 6.1(b) during the Restriction Period, the Investor making such transfer shall provide the Company with written notice of such transfer, and no Covenant Shares shall be transferred on the books of the Company until such written notice has been received by the Company from such Investor. The Company, or, at the instruction of the Company, the transfer agent of the Company, may place a legend on any certificate representing Covenant Shares stating that such shares are subject to the restrictions contained in this Agreement.

6.3 Performance by Affiliates. Each Investor shall remain responsible for and guarantee its Affiliates' performance in connection with this Agreement, and shall cause each such Affiliate to comply fully with the provisions of this Agreement in connection with such performance. Each Investor hereby expressly waives any requirement that the Company exhaust any right, power or remedy, or proceed directly against such an Affiliate, for any obligation or performance hereunder, prior to proceeding directly against such Investor.

6.4 **Restrictive Legend.** Each Investor acknowledges that the certificates representing the Shares, when issued, will bear a restrictive legend in substantially the following form:

“THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR APPLICABLE STATE SECURITIES LAWS. THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SHARES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER THE SECURITIES ACT.”

SECTION 7 Company Covenants

7.1 **Rule 144 Reporting.** With a view to making available to the Investors the benefits of Rule 144, which may permit the sale of the Shares to the public without registration, the Company agrees that, for a period of one (1) year from the Closing Date, it shall:

(a) make and keep public information available, as those terms are understood and defined in Rule 144 promulgated under the Securities Act;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(c) furnish each Investor forthwith upon request (i) a written statement by the Company as to its compliance with the public information requirements of said Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company, and (iii) such other reports and documents as may be reasonably requested in availing the Investor of any rule or regulation of the Commission permitting the sale of any such securities without registration.

7.2 **Legend Removal.** Following the Restriction Period, (i) in connection with any sale of the Shares pursuant to Rule 144, (ii) if such Shares are eligible for sale under Rule 144 following the expiration of the one-year holding requirement under subparagraphs (b)(1)(i) and (d) thereof, or (iii) in connection with any transfer or sale of the Shares pursuant to an available exemption under applicable securities laws, if requested by an Investor, the Company shall cause its transfer agent to remove any restrictive legends on such Shares and make a new, unlegended entry for such book entry or certificate(s), as applicable, Shares without restrictive legends within two (2) Business Days of such request, provided that the Company and its transfer agent have timely received from the Investor customary representations and other documentation reasonably acceptable to the Company and its transfer agent in connection therewith. Any fees (with respect to the Company’s transfer agent, Company or Investor’s counsel, or otherwise) associated with the removal of such legend(s) shall be borne by the Company.

7.3 **Form D and Blue Sky.** The Company agrees to timely file a Form D with respect to the Shares as required under Regulation D. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Shares for sale to the Investors pursuant to this Agreement under applicable state securities laws (or to obtain an exemption from such qualification). The Company shall make all filings and reports relating to the offer and sale of the Shares required under applicable federal and state securities laws following the Closing Date.

7.4 **Listing of Common Stock.** The Company will use its reasonable best efforts to list the Shares on Nasdaq and to maintain the listing of the Common Stock on Nasdaq.

SECTION 8 **Miscellaneous**

8.1 **Governing Law; Exclusive Jurisdiction; Venue.** This Agreement shall be governed in all respects by the laws of the State of New York without application of any provisions thereof that would require the application of the laws of any other jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by another party or its successors or assigns, will be brought and determined exclusively in (i) the state courts of the State of New York in Manhattan, New York, or (ii) the United States District Court for the Southern District of New York. Each of the parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (x) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 8.1, (y) any claim that it or its property is exempt or immune from the jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (z) to the fullest extent permitted by applicable law, any claim that (1) the suit, action or proceeding in such court is brought in an inconvenient forum, (2) the venue of such suit, action or proceeding is improper or (3) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each of the parties agrees that service of process upon such party in any such action or proceeding will be effective if such process is given as a notice in accordance with Section 8.4. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY DIRECT OR INDIRECT ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) MAKES THIS WAIVER VOLUNTARILY, AND (C) ACKNOWLEDGES THAT EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS CONTAINED IN THIS SECTION 8.1.

8.2 **Survival.** The representations, warranties, covenants and agreements made herein shall survive any investigation made by any Investor and the Closing.

8.3 **Successors, Assigns.** Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. This Agreement may not be assigned by either party without the prior written consent of the other; except that either party may assign this Agreement to an Affiliate (as defined in Section 6.1(a)) of such party or to any third party that acquires all or substantially all of such party's business, whether by merger, sale of assets or otherwise.

8.4 **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be sent by electronic mail, facsimile, overnight courier, or U.S. mail by registered or certified mail, postage prepaid, return receipt requested, or otherwise delivered by hand or by messenger, addressed

if to an Investor, at the following address:

c/o Innovatus Life Sciences Lending Fund I, LP
777 Third Avenue, 25th Floor
New York, NY 10017
Attn: Claes Ekstrom
Email: [***]

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

Greenberg Traurig, LLP
One International Place, Suite 2000
Boston, MA 02110
Attn: Abdullah Malik
Fax: (617) 897-0983
Email: [***]

if to the Company, at the following address:

Eiger BioPharmaceuticals, Inc.
2155 Park Boulevard
Palo Alto, CA 94306
Attn: Sri Ryali
Email: [***]

or at such other address as one party shall have furnished to the other party in writing. If notice is provided (i) by electronic mail or facsimile, it shall be deemed to be given one (1) Business Day after transmission (with receipt of appropriate confirmation and, in the case of electronic mail, not rejection notice received); (ii) by U.S. Mail, upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (iii) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (iv) by hand or by messenger, when delivered.

8.5 **Expenses.** The Company and each Investor shall bear its own expenses and legal fees incurred on its behalf with respect to this Agreement and the transactions contemplated hereby.

8.6 **Finder's Fees.** The Company shall indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a finder's fee, placement fee or underwriter's discount (including the costs, expenses and legal fees of defending against such liability) for which the Company, or any of its directors, officers, employees, or representatives, as the case may be, is responsible (other than such fees as contemplated by the Loan Agreement).

8.7 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and enforceable against the party actually executing the counterpart, and all of which together shall constitute one and the same instrument. This Agreement may be executed by electronically transmitted signatures (including, without limitation, through the use of eSignature platforms

such as DocuSign®) and such signatures shall be deemed to bind each party hereto as if they were original signatures; and that this Agreement, or any part thereof, shall not be challenged or denied any legal effect, validity and/or enforceability solely on the ground that it is executed by electronically transmitted signatures.

8.8 **Severability.** In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

8.9 **Entire Agreement.** This Agreement and the Loan Agreement, including the exhibits and schedule attached hereto and thereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof. No party shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein or therein.

8.10 **Waiver.** The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party. None of the terms, covenants and conditions of this Agreement can be waived except by the written consent of the party waiving compliance.

8.11 **Amendment.** This Agreement shall not be amended, changed or modified, except by another agreement in writing executed by the parties.

8.12 **Specific Performance.** The parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

8.13 **Headings.** The headings of the various articles and sections of this Agreement are inserted merely for the purpose of convenience and do not expressly or by implication limit, define or extend the specific terms of the section so designated.

[Signature Page Follows]

COMPANY:

Eiger BioPharmaceuticals, Inc.

By: /s/ David A. Cory
Name: David A. Cory
Title: President

INVESTORS:

Innovatus Life Sciences Lending Fund I, LP

By: Innovatus Life Sciences GP, LP
Its: General Partner

By: /s/ Andrew Dym
Name: Andrew Dym
Title: Authorized Signatory

Innovatus Life Sciences Offshore Fund I-A, LP

By: /s/ Andrew Dym
Name: Andrew Dym
Title: Authorized Signatory

Innovatus Flagship Fund I, LP

By: /s/ Andrew Dym
Name: Andrew Dym
Title: Authorized Signatory

Innovatus Flagship Offshore Fund I, LP

By: /s/ Andrew Dym
Name: Andrew Dym
Title: Authorized Signatory

[Signature Page to Common Stock Purchase Agreement]

Schedule I to Common Stock Purchase Agreement

Per Share Purchase Price: \$6.6751

<u>Investor</u>	<u>Number of Shares Purchased</u>	<u>Purchase Price</u>
Innovatus Life Sciences Lending Fund I, LP	381,488	\$2,546,470.55
Innovatus Life Sciences Offshore Fund I-A, LP	217,754	\$1,453,529.73
Innovatus Flagship Fund I, LP	98,766	\$ 659,272.93
Innovatus Flagship Offshore Fund I, LP	51,045	\$ 340,730.48
Total:	749,053	\$5,000,003.69