

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

**FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Eiger BioPharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

33-0971591
(I.R.S. Employer
Identification Number)

**350 Cambridge Avenue, Suite 350
Palo Alto, CA 94306
(650) 272-6138**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**David A. Cory
President and Chief Executive Officer
Eiger BioPharmaceuticals, Inc.
350 Cambridge Avenue, Suite 350
Palo Alto, CA 94306
(650) 272-6138**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Glen Y. Sato
Michael E. Tenta
Cooley LLP
3175 Hanover Street
Palo Alto, California 94304
(650) 843-5000**

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(1)
Primary Offering:				
Common Stock, par value \$0.001 per share	(2)	(3)	(3)	—
Preferred Stock, par value \$0.001 per share	(2)	(3)	(3)	—
Debt Securities	(2)	(3)	(3)	—
Warrants	(2)	(3)	(3)	—
Total Primary Offering	(2)		\$125,000,000	\$12,588
Secondary Offering				
Common Stock, par value \$0.001 per share	157,587	\$19.94(4)	\$3,142,285	\$317(4)
Total			\$128,142,285	\$12,905

- (1) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, as amended, or the Securities Act.
- (2) There are being registered hereunder such indeterminate number of shares of common stock and preferred stock, such indeterminate principal amount of debt securities, and such indeterminate number of warrants to purchase common stock, preferred stock and/or debt securities as may be sold by the Registrant from time to time, which together shall have an aggregate initial offering price not to exceed \$125,000,000. If any debt securities are issued at an original issue discount, then the offering price of such debt securities shall be in such greater principal amount as shall result in an aggregate offering price not to exceed \$125,000,000, less the aggregate dollar amount of all securities previously issued hereunder. Any securities registered hereunder may be sold separately or in combination with other securities registered hereunder. The proposed maximum offering price of the securities will be determined, from time to time, by the Registrant in connection with the issuance by the Registrant of the securities registered hereunder. The securities registered hereunder also include such indeterminate number of shares of common stock and preferred stock and amount of debt securities as may be issued upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or pursuant to the antidilution provisions of any of such securities. In addition, pursuant to Rule 416 under the Securities Act, the shares being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (3) The proposed maximum aggregate offering price per class of security will be determined from time to time by the Registrant in connection with the issuance by the Registrant of the securities registered hereunder and is not specified as to each class of security pursuant to General Instruction II.D. of Form S-3 under the Securities Act.
- (4) Pursuant to 457(c) under the Securities Act, the offering price and registration fee are based on the average of the high and low prices of the registrant's common stock on the NASDAQ Global Market on June 16, 2016.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This registration statement contains:

- a base prospectus, which covers both (a) the offering, issuance and sale by us of up to \$125,000,000 in the aggregate of the securities identified above from time to time in one or more offerings and (b) the offering and sale by the selling stockholder of up to a maximum of 157,587 shares of common stock; and
- a sales agreement prospectus covering the offering, issuance and sale by us of up to a maximum aggregate offering price of \$25,000,000 of our common stock that may be issued and sold from time to time under a sales agreement with Cantor Fitzgerald & Co. (the "Sales Agreement").

The base prospectus immediately follows this explanatory note. The specific terms of any securities to be offered pursuant to the base prospectus will be specified in a prospectus supplement to the base prospectus. The Sales Agreement prospectus immediately follows the base prospectus. The \$25,000,000 of common stock that may be offered, issued and sold under the Sales Agreement prospectus is included in the \$125,000,000 of securities that may be offered, issued and sold by us under the base prospectus. Upon termination of the Sales Agreement, any portion of the \$25,000,000 included in the Sales Agreement prospectus that is not sold pursuant to the Sales Agreement will be available for sale in other offerings pursuant to the base prospectus, and if no shares are sold under the Sales Agreement, the full \$25,000,000 of securities may be sold in other offerings pursuant to the base prospectus.

The information contained in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, Dated June 17, 2016

PROSPECTUS

\$125,000,000



**Common Stock
Preferred Stock
Debt Securities
Warrants**

and

**157,587 Shares of Common Stock
Offered by the Selling Stockholder**

From time to time, we may offer and sell up to \$125,000,000 of any combination of the securities described in this prospectus, either individually or in combination. We may also offer common stock or preferred stock upon conversion of debt securities, common stock upon conversion of preferred stock, or common stock, preferred stock or debt securities upon the exercise of warrants. We may also authorize one or more free writing prospectuses to be provided to you in connection with these offerings.

In addition, the selling stockholder may from time to time offer and sell up to 157,587 shares of our common stock. We will not receive any of the proceeds from the sale of our common stock by the selling stockholder.

This prospectus describes some of the general terms that may apply to an offering of our securities. Each time we or the selling stockholder offer and sell securities, we or the selling stockholder will provide the specific terms of these offerings and securities in one or more supplements to this prospectus. We may also authorize one or more free writing prospectuses to be provided to you in connection with these offerings. The prospectus supplement and any related free writing prospectus may also add, update or change information contained in this prospectus. You should carefully read this prospectus, the applicable prospectus supplement and any related free writing prospectus, as well as the documents incorporated by reference, before buying any of the securities being offered.

Securities may be sold to or through underwriters or dealers, directly to purchasers or through agents designated from time to time. For additional information on the methods of sale, you should refer to the section titled "Plan of Distribution" in this prospectus and in the applicable prospectus supplement. If any underwriters are involved in the sale of any securities with respect to which this prospectus is being delivered, the names of such underwriters and any applicable discounts or commissions and over-allotment options will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds we expect to receive from such sale will also be set forth in a prospectus supplement.

Our common stock is listed on the NASDAQ Global Market under the symbol "EIGR." On June 16, 2016, the last reported sale price of our common stock on the NASDAQ Global Market was \$20.14 per share. The applicable prospectus supplement will contain information, where applicable, as to other listings, if any, on the NASDAQ Global Market or other securities exchange of the securities covered by the prospectus supplement.

Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "[Risk Factors](#)" contained in the applicable prospectus supplement and in any free writing prospectuses we have authorized for use in connection with a specific offering, and under similar headings in the other documents that are incorporated by reference into this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2016.

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You should rely only on the information contained in, or incorporated by reference into, this prospectus and the applicable prospectus supplement, along with the information contained in any free writing prospectuses we have authorized for use in connection with a specific offering. We have not authorized anyone to provide you with different information. We are not making an offer to sell or seeking an offer to buy securities under this prospectus or the applicable prospectus supplement and any related free writing prospectus in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus, the applicable prospectus supplement or any related free writing prospectus, and the documents incorporated by reference herein and therein, are accurate only as of their respective dates, regardless of the time of delivery of this prospectus, the applicable prospectus supplement or any related free writing prospectus, or any sale of a security.

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration process. Under this shelf registration statement, we may sell from time to time in one or more offerings up to a total dollar amount of \$125,000,000 of common stock and preferred stock, various series of debt securities and/or warrants to purchase any of such securities, either individually or in combination with other securities as described in this prospectus. In addition, the selling stockholder may from time to time sell up to an aggregate amount of 157,587 shares of our common stock in one or more offerings.

This prospectus provides you with a general description of the securities we or selling stockholders may offer. Each time we or the selling stockholder sell any type or series of securities under this prospectus, we will provide a prospectus supplement that will contain more specific information about the terms of that offering. We may also authorize one or more free writing prospectuses to be provided to you that may contain material information relating to these offerings. We may also add, update or change in a prospectus supplement or free writing prospectus any of the information contained in this prospectus or in the documents we have incorporated by reference into this prospectus. This prospectus, together with the applicable prospectus supplement, any related free writing prospectus and the documents incorporated by reference into this prospectus and the applicable prospectus supplement, will include all material information relating to the applicable offering. You

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should carefully read both this prospectus and the applicable prospectus supplement and any related free writing prospectus, together with the additional information described under “Where You Can Find More Information,” before buying any of the securities being offered.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the section titled “Where You Can Find More Information.”

Except as otherwise indicated herein or as the context otherwise requires, references in this prospectus to “Eiger,” “the company,” “we,” “us,” “our” and similar references refer to Eiger BioPharmaceuticals, Inc. and its consolidated subsidiaries.

This prospectus and the information incorporated herein by reference include trademarks, service marks and trade names owned by us or other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus, any applicable prospectus supplement or any related free writing prospectus are the property of their respective owners.

SUMMARY

This summary highlights selected information contained elsewhere in this prospectus or incorporated by reference herein and does not contain all the information that may be important to purchasers of our securities. Prospective purchasers of our securities should carefully read the entire prospectus, the applicable prospectus supplement and any related free writing prospectus, including the risks of investing in our securities discussed under the heading “Risk Factors” contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus. Prospective purchasers of our securities should also carefully read the information incorporated by reference into this prospectus, including our financial statements, and the exhibits to the registration statement of which this prospectus is a part.

Eiger BioPharmaceuticals, Inc.

Overview

We are a clinical stage biopharmaceutical company focused on bringing to market novel product candidates for the treatment of orphan diseases. Since our founding in 2008, we have worked with investigators at Stanford University and evaluated a number of potential development candidates from pharmaceutical companies to comprise a pipeline of novel product candidates. Our resulting pipeline includes four Phase 2 candidates addressing four distinct orphan diseases. The programs have several aspects in common: the disease targets represent conditions of high medical need which are inadequately treated by current standard of care; the therapeutic approaches are supported by an understanding of disease biology and mechanism as elucidated by our academic research relationships; prior clinical experience with the product candidates guides an understanding of safety; and the development paths leverage the experience and capabilities of our experienced, commercially focused management team. The pipeline includes Sarasar® (lonafarnib) for HDV, PEG-interferon Lambda-1a (Lambda) for HDV, exendin (9-39) for severe hypoglycemia and Bestatin™ (ubenimex) for PAH and lymphedema. We plan to deliver Phase 2 data on all five programs over the course of the next one to three years beginning in 2016.

Company Information

We were originally incorporated in California in December 2000 as Celladon Corporation. In April 2012, we reincorporated in Delaware, and in March 2016 we merged with Eiger Biopharmaceuticals, Inc. and changed our name to Eiger Biopharmaceuticals, Inc. Our principal executive offices are located at 350 Cambridge Avenue, Suite 350, Palo Alto, CA 94306, and our telephone number is 650-272-6138. Our corporate website address is www.eigerbio.com. The contents of our website are not incorporated into this Annual Report and our reference to the URL for our website is intended to be an inactive textual reference only.

Implications of Being an Emerging Growth Company

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012. We will remain an emerging growth company until the earlier of (1) the beginning of the first fiscal year following the fifth anniversary of our initial public offering, or January 1, 2020, (2) the beginning of the first fiscal year after our annual gross revenue is \$1.0 billion or more, (3) the date on which we have, during the previous three-year period, issued more than \$1.0 billion in non-convertible debt securities and (4) as of the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded \$700 million as of the end of the second quarter of that fiscal year.

For as long as we remain an “emerging growth company,” we may take advantage of certain exemptions from various reporting requirements that are applicable to public companies that are not “emerging growth companies” including, but not limited to, not being required to comply with the auditor attestation requirements

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of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation and financial statements in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote to approve executive compensation and shareholder approval of any golden parachute payments not previously approved. We will take advantage of these reporting exemptions until we are no longer an “emerging growth company.”

Risks Associated with our Business

Our business is subject to numerous risks, as described under the heading “Risk Factors” contained in the applicable prospectus supplement and in any free writing prospectuses we have authorized for use in connection with a specific offering, and under similar headings in the documents that are incorporated by reference into this prospectus.

THE SECURITIES WE MAY OFFER

We may offer shares of our common stock and preferred stock, various series of debt securities and/or warrants to purchase any of such securities, either individually or in combination, up to a total dollar amount of \$125,000,000 from time to time in one or more offerings. In addition, the selling stockholder may offer up to 157,587 shares of common stock from time to time in one or more offerings. This prospectus provides you with a general description of the securities we and the selling stockholder may offer. Each time we or the selling stockholder offer a type or series of securities under this prospectus, we will provide a prospectus supplement that will describe the specific amounts, prices and other important terms of the securities, including, to the extent applicable:

- designation or classification;
- aggregate principal amount or aggregate offering price;
- maturity;
- original issue discount;
- rates and times of payment of interest or dividends;
- redemption, conversion, exercise, exchange or sinking fund terms;
- ranking;
- restrictive covenants;
- voting or other rights;
- conversion or exchange prices or rates and, if applicable, any provisions for changes to or adjustments in the conversion or exchange prices or rates and in the securities or other property receivable upon conversion or exchange; and
- a discussion of material or special U.S. federal income tax considerations, if any.

The applicable prospectus supplement and any related free writing prospectus that we may authorize to be provided to you may also add, update or change any of the information contained in this prospectus or in the documents we have incorporated by reference. However, no prospectus supplement or free writing prospectus will offer a security that is not registered and described in this prospectus at the time of the effectiveness of the registration statement of which this prospectus is a part.

This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.

We and the selling stockholder may sell the securities directly to investors or to or through agents, underwriters or dealers. We and the selling stockholder, and our or their agents, underwriters or dealers reserve the right to accept or reject all or part of any proposed purchase of securities. If we or the selling stockholder offer securities to or through agents, underwriters or dealers, the applicable prospectus supplement will include:

- the names of those agents, underwriters or dealers;
- applicable fees, discounts and commissions to be paid to them;
- details regarding over-allotment or other options, if any; and
- the net proceeds to us or the selling stockholder, if any.

Common Stock

We may issue shares of our common stock from time to time. The selling stockholder may offer shares of our common stock to the extent such shares were issued and outstanding prior to the original date of the registration statement to which this prospectus relates. Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our amended and restated certificate of incorporation, or certificate of incorporation, and amended and restated bylaws, or bylaws, our stockholders do not have cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose. Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds. In the event of our liquidation, dissolution or winding up, holders of common stock are entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of preferred stock. Holders of common stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future. In this prospectus, we have summarized certain general features of the common stock under “Description of Capital Stock—Common Stock.” We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to any common stock being offered.

Preferred Stock

We may issue shares of our preferred stock from time to time, in one or more series. Our board of directors will determine the designations, voting powers, preferences and rights of the preferred stock, as well as the qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, preemptive rights, terms of redemption or repurchase, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of any series. Convertible preferred stock will be convertible into or exchangeable for our common stock or other securities. Conversion may be mandatory or at your option and would be at prescribed conversion rates.

If we sell any series of preferred stock under this prospectus, we will fix the designations, voting powers, preferences and rights of such series of preferred stock, as well as the qualifications, limitations or restrictions thereof, in the certificate of designation relating to that series. We will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of any certificate of designation that describes the terms of the series of preferred stock that we are offering before the issuance of the related series of preferred stock. In this prospectus, we have summarized certain general features of the preferred stock under “Description of Capital Stock—Preferred Stock.” We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to the series of preferred stock being offered, as well as the complete certificate of designation that contains the terms of the applicable series of preferred stock.

Debt Securities

We may issue debt securities from time to time, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. The senior debt securities will rank equally with any other unsecured and unsubordinated debt. The subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner described in the instrument governing the debt, to all of our senior indebtedness. Convertible debt securities will be convertible into or exchangeable for our common stock or other securities. Conversion may be mandatory or at your option and would be at prescribed conversion rates.

Any debt securities issued under this prospectus will be issued under one or more documents called indentures, which are contracts between us and a national banking association or other eligible party, as trustee. In this prospectus, we have summarized certain general features of the debt securities under “Description of Debt Securities.” We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to the series of debt securities being offered, as well as the complete indentures that contain the terms of the debt securities. A form of indenture has been filed as an exhibit to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of the debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports that we file with the SEC.

Warrants

We may issue warrants for the purchase of common stock, preferred stock and/or debt securities in one or more series. We may issue warrants independently or together with common stock, preferred stock and/or debt securities, and the warrants may be attached to or separate from these securities. In this prospectus, we have summarized certain general features of the warrants under “Description of Warrants.” We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to the series of warrants being offered, as well as any warrant agreements and warrant certificates that contain the terms of the warrants. We have filed forms of the warrant agreements and forms of warrant certificates containing the terms of the warrants that may be offered as exhibits to the registration statement of which this prospectus is a part. We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of warrant and/or the warrant agreement and warrant certificate, as applicable, that contain the terms of the particular series of warrants we are offering, and any supplemental agreements, before the issuance of such warrants.

Any warrants issued under this prospectus may be evidenced by warrant certificates. Warrants also may be issued under an applicable warrant agreement that we enter into with a warrant agent. We will indicate the name and address of the warrant agent, if applicable, in the prospectus supplement relating to the particular series of warrants being offered.

RISK FACTORS

Investing in our securities involves a high degree of risk. Before deciding whether to invest in our securities, you should consider carefully the risks and uncertainties described under the heading “Risk Factors” contained in the applicable prospectus supplement and any related free writing prospectus, and discussed under the section titled “Risk Factors” contained in our most recent Annual Report on Form 10-K and in our most recent Quarterly Report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC, which are incorporated by reference into this prospectus in their entirety, together with other information in this prospectus, the documents incorporated by reference and any free writing prospectus that we may authorize for use in connection with this offering. The risks described in these documents are not the only ones we face, but those that we consider to be material. There may be other unknown or unpredictable economic, business, competitive, regulatory or other factors that could have material adverse effects on our future results. Past financial performance may not be a reliable indicator of future performance, and historical trends should not be used to anticipate results or trends in future periods. If any of these risks actually occurs, our business, financial condition, results of operations or cash flow could be seriously harmed. This could cause the trading price of our common stock to decline, resulting in a loss of all or part of your investment. Please also read carefully the section below titled “Forward-Looking Statements.”

FORWARD-LOOKING STATEMENTS

This prospectus, including the documents that we incorporate by reference herein, contains, and any applicable prospectus supplement or free writing prospectus including the documents we incorporate by reference therein may contain, forward-looking statements, including statements regarding our future financial condition, business strategy and plans and objectives of management for future operations. Forward-looking statements include all statements that are not historical facts. In some cases you can identify these statements by forward-looking words such as “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “could,” “would,” “project,” “plan,” “expect” or the negative or plural of these words or similar expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- the success, cost and timing of our product development activities and clinical trials;
- our ability to obtain and maintain regulatory approval for lonafarnib, exendin (9-39) and ubenimex, and any of our future product candidates, and any related restrictions, limitations, and/or warnings in the label of an approved product candidate;
- our ability to obtain funding for our operations, including funding necessary to complete all clinical trials that may potentially be required to file a new drug application, or NDA, and a Marketing Authorization Application, or MAA, for our product candidates;
- the commercialization of our product candidates, if approved;
- our plans to research, develop and commercialize our product candidates;
- our ability to attract collaborators with development, regulatory and commercialization expertise;
- the size and growth potential of the markets for our product candidates, and our ability to serve those markets;
- the rate and degree of market acceptance of our product candidates;
- regulatory developments in the United States and foreign countries;
- the performance of our third-party suppliers and manufacturers;
- the success of competing therapies that are or may become available;
- our ability to attract and retain key scientific or management personnel;

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- the accuracy of our estimates regarding expenses, future revenues, capital requirements and needs for additional financing;
- our expectations regarding the period during which we qualify as an emerging growth company under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act; and
- our expectations regarding our ability to obtain and maintain intellectual property protection for our product candidates.

These statements reflect our current views with respect to future events and are based on assumptions and are subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. We discuss in greater detail many of these risks under the heading “Risk Factors” contained in the applicable prospectus supplement, in any free writing prospectuses we may authorize for use in connection with a specific offering, and in our most recent annual report on Form 10-K and in our most recent quarterly report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Also, these forward-looking statements represent our estimates and assumptions only as of the date of the document containing the applicable statement. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements. You should read this prospectus, any applicable prospectus supplement, together with the documents we have filed with the SEC that are incorporated by reference and any free writing prospectus that we may authorize for use in connection with this offering completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements.

FINANCIAL RATIOS

The following table sets forth, for each of the periods presented, our deficiency of earnings to cover fixed charges. Our earnings were insufficient to cover fixed charges for the three months ended March 31, 2016 and the years ended December 31, 2015, 2014 and 2013.

	Year Ended December 31,			Three Months Ended
	2015	2014	2013	March 31, 2016
	(in thousands)			
Ratio of earnings to fixed charges(1)	N/A	N/A	N/A	N/A
Deficiency of earnings available to cover fixed charges(2)	\$(12,973)	\$(1,516)	\$(953)	\$ (9,063)

(1) In each of the periods presented, earnings were not sufficient to cover fixed charges.

(2) For purposes of this calculation, earnings consist of loss before income taxes and fixed charges. Fixed charges consist of interest expense.

USE OF PROCEEDS

Except as described in any applicable prospectus supplement or in any free writing prospectuses we have authorized for use in connection with a specific offering, we currently intend to use the net proceeds from the sale of the securities offered by us hereunder, if any, for working capital and general corporate purposes, including research and development expenses and capital expenditures. We will not receive any proceeds from the sale of shares of our common stock by the selling stockholder.

The amounts and timing of our use of the net proceeds from this offering will depend on a number of factors, such as the timing and progress of our research and development efforts, the timing and progress of any partnering and commercialization efforts, technological advances and the competitive environment for our products. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to us from the sale of the securities offered by us hereunder. Accordingly, our management will have broad discretion in the timing and application of these proceeds. Pending application of the net proceeds as described above, we intend to temporarily invest the proceeds in short-term, interest-bearing instruments.

DESCRIPTION OF CAPITAL STOCK

As of the date of this prospectus, our certificate of incorporation, authorizes us to issue up to 200,000,000 shares of common stock, \$0.001 par value per share, and 10,000,000 shares of preferred stock, \$0.001 par value per share. As of March 31, 2016, 6,945,401 shares of common stock were outstanding and no shares of preferred stock were outstanding.

The following summary describes the material terms of our capital stock. The description of capital stock is qualified by reference to our certificate of incorporation and our bylaws.

Common Stock

Voting Rights

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our certificate of incorporation and bylaws, our stockholders do not have cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends

Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of preferred stock.

Rights and Preferences

Holders of common stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

Preferred Stock

Under our certificate of incorporation, our board of directors is authorized by resolution to divide the preferred stock into series and, with respect to each series, to determine the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights, redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Our board of directors can, without stockholder approval but subject to the terms of the certificate of incorporation, issue preferred stock with voting and other rights that could adversely affect the voting power of the holders of our common stock and which could have certain anti-takeover effects. Before we may issue any series of preferred stock, our board of directors will be required to adopt resolutions creating and designating such series of preferred stock.

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The following summary of terms of our preferred stock is not complete. You should refer to the provisions of our certificate of incorporation and bylaws and the resolutions containing the terms of each class or series of the preferred stock which have been or will be filed with the SEC at or prior to the time of issuance of such class or series of preferred stock and described in the applicable prospectus supplement. The applicable prospectus supplement may also state that any of the terms set forth herein are inapplicable to such series of preferred stock, provided that the information set forth in such prospectus supplement does not constitute material changes to the information herein such that it alters the nature of the offering or the securities offered.

We will fix the designations, voting powers, preferences and rights of the preferred stock of each series we issue under this prospectus, as well as the qualifications, limitations or restrictions thereof, in the certificate of designation relating to that series. We will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of any certificate of designation that describes the terms of the series of preferred stock we are offering. We will describe in the applicable prospectus supplement the terms of the series of preferred stock being offered, including, to the extent applicable:

- the title and stated value;
- the number of shares we are offering;
- the liquidation preference per share;
- the purchase price;
- the dividend rate, period and payment date and method of calculation for dividends;
- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;
- the procedures for any auction and remarketing;
- the provisions for a sinking fund;
- the provisions for redemption or repurchase and any restrictions on our ability to exercise those redemption and repurchase rights;
- any listing of the preferred stock on any securities exchange or market;
- whether the preferred stock will be convertible into our common stock, and the conversion rate or conversion price, or how they will be calculated, and the conversion period;
- whether the preferred stock will be exchangeable into debt securities, and the exchange rate or exchange price, or how they will be calculated, and the exchange period;
- voting rights of the preferred stock;
- preemptive rights;
- restrictions on transfer, sale or other assignment;
- whether interests in the preferred stock will be represented by depositary shares;
- a discussion of material or special U.S. federal income tax considerations applicable to the preferred stock;
- the relative ranking and preferences of the preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs;
- any limitations on the issuance of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs; and

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- any other specific terms, preferences, rights or limitations of, or restrictions on, the preferred stock.

If we issue shares of preferred stock under this prospectus, the shares will be fully paid and non-assessable.

The issuance of preferred stock could adversely affect the voting power of holders of common stock and reduce the likelihood that common stockholders will receive dividend payments and payments upon liquidation. The issuance could have the effect of decreasing the market price of the common stock. The issuance of preferred stock also could have the effect of delaying, deterring or preventing a change in control of us.

Anti-Takeover Provisions

Certificate of Incorporation and Bylaws

Provisions of our amended and restated certificate of incorporation and amended and restated bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws:

- permit our board of directors to issue up to 10,000,000 shares of preferred stock, with any rights, preferences and privileges as they may designate (including the right to approve an acquisition or other change in control);
- provide that the authorized number of directors may be changed only by resolution adopted by a majority of the board of directors;
- provide that the board of directors or any individual director may only be removed with cause and the affirmative vote of the holders of at least 66 2/3% of the voting power of all of our then outstanding common stock;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law or subject to the rights of holders of preferred stock as designated from time to time, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner and also specify requirements as to the form and content of a stockholder's notice;
- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
- provide that special meetings of our stockholders may be called only by the chairman of the board, our Chief Executive Officer or by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exists any vacancies); and
- provide that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (1) any derivative action or proceeding brought on Celladon's behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of Celladon's directors or officers to Celladon or its stockholders, (3) any action asserting a claim against Celladon arising pursuant to any provision of the Delaware General Corporation Law or Celladon's certificate of incorporation or bylaws or (4) any action asserting a claim against Celladon governed by the internal affairs doctrine.

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Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder (as defined below), with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon closing of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an “interested stockholder” as an entity or person who, together with the person’s affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

A Delaware corporation may “opt out” of these provisions with an express provision in its certificate of incorporation. We have not opted out of these provisions, which may discourage or prevent mergers or other takeover or change of control attempts of our company.

Listing

Our common stock is listed on the NASDAQ Global Market under the symbol “EIGR.”

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer and Trust Company, LLC. The transfer agent and registrar’s address is 6201 15th Avenue, Brooklyn, New York 11219.

DESCRIPTION OF DEBT SECURITIES

We may issue debt securities from time to time, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. While the terms we have summarized below will apply generally to any debt securities that we may offer under this prospectus, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement. The terms of any debt securities offered under a prospectus supplement may differ from the terms described below. Unless the context requires otherwise, whenever we refer to the indenture, we also are referring to any supplemental indentures that specify the terms of a particular series of debt securities.

We will issue the debt securities under the indenture that we will enter into with the trustee named in the indenture. The indenture will be qualified under the Trust Indenture Act of 1939, as amended, or the Trust Indenture Act. We have filed the form of indenture as an exhibit to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of the debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports that we file with the SEC.

The following summary of material provisions of the debt securities and the indenture is subject to, and qualified in its entirety by reference to, all of the provisions of the indenture applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplements and any related free writing prospectuses related to the debt securities that we may offer under this prospectus, as well as the complete indenture that contains the terms of the debt securities.

General

The indenture does not limit the amount of debt securities that we may issue. It provides that we may issue debt securities up to the principal amount that we may authorize and may be in any currency or currency unit that we may designate. Except for the limitations on consolidation, merger and sale of all or substantially all of our assets contained in the indenture, the terms of the indenture do not contain any covenants or other provisions designed to give holders of any debt securities protection against changes in our operations, financial condition or transactions involving us.

We may issue the debt securities issued under the indenture as “discount securities,” which means they may be sold at a discount below their stated principal amount. These debt securities, as well as other debt securities that are not issued at a discount, may be issued with “original issue discount,” or OID, for U.S. federal income tax purposes because of interest payment and other characteristics or terms of the debt securities. Material U.S. federal income tax considerations applicable to debt securities issued with OID will be described in more detail in any applicable prospectus supplement.

We will describe in the applicable prospectus supplement the terms of the series of debt securities being offered, including:

- the title of the series of debt securities;
- any limit upon the aggregate principal amount that may be issued;
- the maturity date or dates;
- the form of the debt securities of the series;
- the applicability of any guarantees;
- whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;
- whether the debt securities rank as senior debt, senior subordinated debt, subordinated debt or any combination thereof, and the terms of any subordination;

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- if the price (expressed as a percentage of the aggregate principal amount thereof) at which such debt securities will be issued is a price other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or if applicable, the portion of the principal amount of such debt securities that is convertible into another security or the method by which any such portion shall be determined;
- the interest rate or rates, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;
- our right, if any, to defer payment of interest and the maximum length of any such deferral period;
- if applicable, the date or dates after which, or the period or periods during which, and the price or prices at which, we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions and the terms of those redemption provisions;
- the date or dates, if any, on which, and the price or prices at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder's option to purchase, the series of debt securities and the currency or currency unit in which the debt securities are payable;
- the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof;
- any and all terms, if applicable, relating to any auction or remarketing of the debt securities of that series and any security for our obligations with respect to such debt securities and any other terms which may be advisable in connection with the marketing of debt securities of that series;
- whether the debt securities of the series shall be issued in whole or in part in the form of a global security or securities; the terms and conditions, if any, upon which such global security or securities may be exchanged in whole or in part for other individual securities; and the depositary for such global security or securities;
- if applicable, the provisions relating to conversion or exchange of any debt securities of the series and the terms and conditions upon which such debt securities will be so convertible or exchangeable, including the conversion or exchange price, as applicable, or how it will be calculated and may be adjusted, any mandatory or optional (at our option or the holders' option) conversion or exchange features, the applicable conversion or exchange period and the manner of settlement for any conversion or exchange;
- if other than the full principal amount thereof, the portion of the principal amount of debt securities of the series which shall be payable upon declaration of acceleration of the maturity thereof;
- additions to or changes in the covenants applicable to the particular debt securities being issued, including, among others, the consolidation, merger or sale covenant;
- additions to or changes in the events of default with respect to the securities and any change in the right of the trustee or the holders to declare the principal, premium, if any, and interest, if any, with respect to such securities to be due and payable;
- additions to or changes in or deletions of the provisions relating to covenant defeasance and legal defeasance;
- additions to or changes in the provisions relating to satisfaction and discharge of the indenture;
- additions to or changes in the provisions relating to the modification of the indenture both with and without the consent of holders of debt securities issued under the indenture;
- the currency of payment of debt securities if other than U.S. dollars and the manner of determining the equivalent amount in U.S. dollars;

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- whether interest will be payable in cash or additional debt securities at our or the holders' option and the terms and conditions upon which the election may be made;
- the terms and conditions, if any, upon which we will pay amounts in addition to the stated interest, premium, if any and principal amounts of the debt securities of the series to any holder that is not a "United States person" for federal tax purposes;
- any restrictions on transfer, sale or assignment of the debt securities of the series; and
- any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities, any other additions or changes in the provisions of the indenture, and any terms that may be required by us or advisable under applicable laws or regulations.

Conversion or Exchange Rights

We will set forth in the applicable prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for our common stock or our other securities. We will include provisions as to settlement upon conversion or exchange and whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of our common stock or our other securities that the holders of the series of debt securities receive would be subject to adjustment.

Consolidation, Merger or Sale

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the indenture will not contain any covenant that restricts our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of our assets as an entirety or substantially as an entirety. However, any successor to or acquirer of such assets (other than a subsidiary of ours) must assume all of our obligations under the indenture or the debt securities, as appropriate.

Events of Default under the Indenture

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the following are events of default under the indenture with respect to any series of debt securities that we may issue:

- if we fail to pay any installment of interest on any series of debt securities, as and when the same shall become due and payable, and such default continues for a period of 90 days; provided, however, that a valid extension of an interest payment period by us in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of interest for this purpose;
- if we fail to pay the principal of, or premium, if any, on any series of debt securities as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise, or in any payment required by any sinking or analogous fund established with respect to such series; provided, however, that a valid extension of the maturity of such debt securities in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of principal or premium, if any;
- if we fail to observe or perform any other covenant or agreement contained in the debt securities or the indenture, other than a covenant specifically relating to another series of debt securities, and our failure continues for 90 days after we receive written notice of such failure, requiring the same to be remedied and stating that such is a notice of default thereunder, from the trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of the applicable series; and
- if specified events of bankruptcy, insolvency or reorganization occur.

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If an event of default with respect to debt securities of any series occurs and is continuing, other than an event of default specified in the last bullet point above, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series, by notice to us in writing, and to the trustee if notice is given by such holders, may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. If an event of default specified in the last bullet point above occurs with respect to us, the principal amount of and accrued interest, if any, of each issue of debt securities then outstanding shall be due and payable without any notice or other action on the part of the trustee or any holder.

The holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to the series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest, unless we have cured the default or event of default in accordance with the indenture. Any waiver shall cure the default or event of default.

Subject to the terms of the indenture, if an event of default under an indenture shall occur and be continuing, the trustee will be under no obligation to exercise any of its rights or powers under such indenture at the request or direction of any of the holders of the applicable series of debt securities, unless such holders have offered the trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series, provided that:

- the direction so given by the holder is not in conflict with any law or the applicable indenture; and
- subject to its duties under the Trust Indenture Act, the trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

A holder of the debt securities of any series will have the right to institute a proceeding under the indenture or to appoint a receiver or trustee, or to seek other remedies only if:

- the holder has given written notice to the trustee of a continuing event of default with respect to that series;
- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request,
- such holders have offered to the trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred by the trustee in compliance with the request; and
- the trustee does not institute the proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 90 days after the notice, request and offer.

These limitations do not apply to a suit instituted by a holder of debt securities if we default in the payment of the principal, premium, if any, or interest on, the debt securities.

We will periodically file statements with the trustee regarding our compliance with specified covenants in the indenture.

Modification of Indenture; Waiver

We and the trustee may change an indenture without the consent of any holders with respect to specific matters:

- to cure any ambiguity, defect or inconsistency in the indenture or in the debt securities of any series;

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- to comply with the provisions described above under “Description of Debt Securities—Consolidation, Merger or Sale;”
- to provide for uncertificated debt securities in addition to or in place of certificated debt securities;
- to add to our covenants, restrictions, conditions or provisions such new covenants, restrictions, conditions or provisions for the benefit of the holders of all or any series of debt securities, to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default or to surrender any right or power conferred upon us in the indenture;
- to add to, delete from or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication and delivery of debt securities, as set forth in the indenture;
- to make any change that does not adversely affect the interests of any holder of debt securities of any series in any material respect;
- to provide for the issuance of and establish the form and terms and conditions of the debt securities of any series as provided above under “Description of Debt Securities—General” to establish the form of any certifications required to be furnished pursuant to the terms of the indenture or any series of debt securities, or to add to the rights of the holders of any series of debt securities;
- to evidence and provide for the acceptance of appointment under any indenture by a successor trustee; or
- to comply with any requirements of the SEC in connection with the qualification of any indenture under the Trust Indenture Act.

In addition, under the indenture, the rights of holders of a series of debt securities may be changed by us and the trustee with the written consent of the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series that is affected. However, unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, we and the trustee may make the following changes only with the consent of each holder of any outstanding debt securities affected:

- extending the fixed maturity of any debt securities of any series;
- reducing the principal amount, reducing the rate of or extending the time of payment of interest, or reducing any premium payable upon the redemption of any series of any debt securities; or
- reducing the percentage of debt securities, the holders of which are required to consent to any amendment, supplement, modification or waiver.

Discharge

Each indenture provides that we can elect to be discharged from our obligations with respect to one or more series of debt securities, except for specified obligations, including obligations to:

- provide for payment;
- register the transfer or exchange of debt securities of the series;
- replace stolen, lost or mutilated debt securities of the series;
- pay principal of and premium and interest on any debt securities of the series;
- maintain paying agencies;
- hold monies for payment in trust;
- recover excess money held by the trustee;

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- compensate and indemnify the trustee; and
- appoint any successor trustee.

In order to exercise our rights to be discharged, we must deposit with the trustee money or government obligations sufficient to pay all the principal of, any premium, if any, and interest on, the debt securities of the series on the dates payments are due.

Form, Exchange and Transfer

We will issue the debt securities of each series only in fully registered form without coupons and, unless we provide otherwise in the applicable prospectus supplement, in denominations of \$1,000 and any integral multiple thereof. The indenture provides that we may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company, or DTC, or another depository named by us and identified in the applicable prospectus supplement with respect to that series. To the extent the debt securities of a series are issued in global form and as book-entry, a description of terms relating to any book-entry securities will be set forth in the applicable prospectus supplement.

At the option of the holder, subject to the terms of the indenture and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indenture and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless otherwise provided in the debt securities that the holder presents for transfer or exchange, we will impose no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.

We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

If we elect to redeem the debt securities of any series, we will not be required to:

- issue, register the transfer of, or exchange any debt securities of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; or
- register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

Information Concerning the Trustee

The trustee, other than during the occurrence and continuance of an event of default under an indenture, undertakes to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the trustee must use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the trustee is under no obligation to

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exercise any of the powers given it by the indenture at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

Payment and Paying Agents

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of and any premium and interest on the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check that we will mail to the holder or by wire transfer to certain holders. Unless we otherwise indicate in the applicable prospectus supplement, we will designate the corporate trust office of the trustee as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the trustee for the payment of the principal of or any premium or interest on any debt securities that remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the debt security thereafter may look only to us for payment thereof.

Governing Law

The indenture and the debt securities will be governed by and construed in accordance with the internal laws of the State of New York, except to the extent that the Trust Indenture Act of 1939 is applicable.

DESCRIPTION OF WARRANTS

The following description, together with the additional information we may include in any applicable prospectus supplement and free writing prospectus, summarizes the material terms and provisions of the warrants that we may offer under this prospectus, which may consist of warrants to purchase common stock, preferred stock and/or debt securities and may be issued in one or more series. Warrants may be offered independently or in combination with common stock, preferred stock or debt securities offered by any prospectus supplement. While the terms we have summarized below will apply generally to any warrants that we may offer under this prospectus, we will describe the particular terms of any series of warrants in more detail in the applicable prospectus supplement. The following description of warrants will apply to the warrants offered by this prospectus unless we provide otherwise in the applicable prospectus supplement. The applicable prospectus supplement for a particular series of warrants may specify different or additional terms.

We have filed forms of the warrant agreements and forms of warrant certificates containing the terms of the warrants that may be offered as exhibits to the registration statement of which this prospectus is a part. We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of warrant and/or the warrant agreement and warrant certificate, as applicable, that contain the terms of the particular series of warrants we are offering, and any supplemental agreements, before the issuance of such warrants. The following summaries of material terms and provisions of the warrants are subject to, and qualified in their entirety by reference to, all the provisions of the form of warrant and/or the warrant agreement and warrant certificate, as applicable, and any supplemental agreements applicable to a particular series of warrants that we may offer under this prospectus. We urge you to read the applicable prospectus supplement related to the particular series of warrants that we may offer under this prospectus, as well as any related free writing prospectus, and the complete form of warrant and/or the warrant agreement and warrant certificate, as applicable, and any supplemental agreements, that contain the terms of the warrants.

General

We will describe in the applicable prospectus supplement the terms of the series of warrants being offered, including, to the extent applicable:

- the offering price and aggregate number of warrants offered;
- the currency for which the warrants may be purchased;
- the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each such security or each principal amount of such security;
- the date on and after which the warrants and the related securities will be separately transferable;
- in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant and the price at, and currency in which, this principal amount of debt securities may be purchased upon such exercise;
- in the case of warrants to purchase common stock or preferred stock, the number of shares of common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares may be purchased upon such exercise;
- the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreements and the warrants;
- the terms of any rights to redeem or call the warrants;
- any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;
- the dates on which the right to exercise the warrants will commence and expire;

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- the manner in which the warrant agreements and warrants may be modified;
- a discussion of material or special U.S. federal income tax consequences of holding or exercising the warrants;
- the terms of the securities issuable upon exercise of the warrants; and
- any other specific terms, preferences, rights or limitations of or restrictions on the warrants.

Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including:

- in the case of warrants to purchase common stock or preferred stock, the right to receive dividends, if any, or, payments upon our liquidation, dissolution or winding up or to exercise voting rights, if any; or
- in the case of warrants to purchase debt securities, the right to receive payments of principal of, or premium, if any, or interest on, the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture.

Exercise of Warrants

Each warrant will entitle the holder to purchase the securities that we specify in the applicable prospectus supplement at the exercise price that we describe in the applicable prospectus supplement. The warrants may be exercised as set forth in the prospectus supplement relating to the warrants offered. Unless we otherwise specify in the applicable prospectus supplement, warrants may be exercised at any time up to the specified time on the expiration date that we set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Upon receipt of payment and the warrant or warrant certificate, as applicable, properly completed and duly executed at the corporate trust office of the warrant agent, if any, or any other office, including ours, indicated in the prospectus supplement, we will, as soon as practicable, issue and deliver the securities purchasable upon such exercise. If less than all of the warrants (or the warrants represented by such warrant certificate) are exercised, a new warrant or a new warrant certificate, as applicable, will be issued for the remaining warrants.

Governing Law

Unless we provide otherwise in the applicable prospectus supplement, the warrants and warrant agreements, and any claim, controversy or dispute arising under or related to the warrants or warrant agreements, will be governed by and construed in accordance with the laws of the State of New York.

Enforceability of Rights by Holders of Warrants

Each warrant agent, if any, will act solely as our agent under the applicable warrant agreement and will not assume any obligation or relationship of agency or trust with any holder of any warrant. A single bank or trust company may act as warrant agent for more than one issue of warrants. A warrant agent will have no duty or responsibility in case of any default by us under the applicable warrant agreement or warrant, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a warrant may, without the consent of the related warrant agent or the holder of any other warrant, enforce by appropriate legal action its right to exercise, and receive the securities purchasable upon exercise of, its warrants.

LEGAL OWNERSHIP OF SECURITIES

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee, depositary or warrant agent maintain for this purpose as the “holders” of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as “indirect holders” of those securities. As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

Book-Entry Holders

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary’s book-entry system. These participating institutions, which are referred to as participants, in turn, hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depositary or its participants. Consequently, for securities issued in global form, we will recognize only the depositary as the holder of the securities, and we will make all payments on the securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a global security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary’s book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not legal holders, of the securities.

Street Name Holders

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in “street name.” Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we or any applicable trustee or depositary will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we or any applicable trustee or depositary will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect holders, not holders, of those securities.

Legal Holders

Our obligations, as well as the obligations of any applicable trustee and of any third parties employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

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For example, once we make a payment or give a notice to the legal holder, we have no further responsibility for the payment or notice even if that legal holder is required, under agreements with its participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the legal holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the indenture or for other purposes. In such an event, we would seek approval only from the holders, and not the indirect holders, of the securities. Whether and how the legal holders contact the indirect holders is up to the legal holders.

Special Considerations for Indirect Holders

If you hold securities through a bank, broker or other financial institution, either in book-entry form because the securities are represented by one or more global securities or in street name, you should check with your own institution to find out:

- how it handles securities payments and notices;
- whether it imposes fees or charges;
- how it would handle a request for the holders' consent, if ever required;
- whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;
- how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and
- if the securities are in book-entry form, how the depositary's rules and procedures will affect these matters.

Global Securities

A global security is a security that represents one or any other number of individual securities held by a depositary. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we issue to, deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depositary. Unless we specify otherwise in the applicable prospectus supplement, DTC will be the depositary for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depositary, its nominee or a successor depositary, unless special termination situations arise. We describe those situations below under "Special Situations When a Global Security Will Be Terminated." As a result of these arrangements, the depositary, or its nominee, will be the sole registered owner and legal holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depositary or with another institution that does. Thus, an investor whose security is represented by a global security will not be a legal holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.

Special Considerations for Global Securities

The rights of an indirect holder relating to a global security will be governed by the account rules of the investor's financial institution and of the depository, as well as general laws relating to securities transfers. We do not recognize an indirect holder as a holder of securities and instead deal only with the depository that holds the global security.

If securities are issued only in the form of a global security, an investor should be aware of the following:

- an investor cannot cause the securities to be registered in his or her name, and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below;
- an investor will be an indirect holder and must look to his or her own bank, broker or other financial institution for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above;
- an investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form;
- an investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective;
- the depository's policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor's interest in a global security;
- we and any applicable trustee have no responsibility for any aspect of the depository's actions or for its records of ownership interests in a global security, nor do we or any applicable trustee supervise the depository in any way;
- the depository may, and we understand that DTC will, require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your bank, broker or other financial institution may require you to do so as well; and
- financial institutions that participate in the depository's book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the securities.

There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

Special Situations When a Global Security Will Be Terminated

In a few special situations described below, the global security will terminate and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks, brokers or other financial institutions to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above.

Unless we provide otherwise in the applicable prospectus supplement, the global security will terminate when the following special situations occur:

- if the depository notifies us that it is unwilling, unable or no longer qualified to continue as depository for that global security and we do not appoint another institution to act as depository within 90 days;

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- if we notify any applicable trustee that we wish to terminate that global security; or
- if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived.

The prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the applicable prospectus supplement. When a global security terminates, the depository, and not we or any applicable trustee, is responsible for deciding the names of the institutions that will be the initial direct holders.

SELLING STOCKHOLDER

This prospectus also relates to the possible sale by Bristol-Myers Squibb Company, who we refer to in this prospectus as the “selling stockholder,” of up to 157,587 shares of our common stock that were issued and outstanding prior to the original date of filing of the registration statement of which this prospectus forms a part. On April 20, 2016, pursuant to the terms of a Share Purchase Agreement, we issued and sold 157,587 shares of our common stock to Bristol-Myers Squibb Company at a price per share of \$19.04.

Information about the selling stockholder, where applicable, including the amount of shares of common stock owned by the selling stockholder prior to the offering, the number of shares of our common stock to be offered by the selling stockholder and the amount of common stock to be owned by the selling stockholder after completion of the offering, will be set forth in an applicable prospectus supplement, documents incorporated by reference or in a free writing prospectus we file with the SEC.

The selling stockholder shall not sell any shares of our common stock pursuant to this prospectus until we have identified the shares being offered for resale by the selling stockholder in a subsequent prospectus supplement. However, the selling stockholder may sell or transfer all or a portion of its shares of our common stock pursuant to any available exemption from the registration requirements of the Securities Act.

PLAN OF DISTRIBUTION

We or the selling stockholder may sell the securities from time to time pursuant to underwritten public offerings, direct sales to the public, “at the market” offerings, negotiated transactions, block trades or a combination of these methods. We or the selling stockholders may sell the securities to or through underwriters or dealers, through agents, or directly to one or more purchasers. We or the selling stockholders may distribute securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

A prospectus supplement or supplements (and any related free writing prospectus that we may authorize to be provided to you) will describe the terms of the offering of the securities, including, to the extent applicable:

- the name or names of the underwriters, if any;
- the purchase price of the securities or other consideration therefor, and the proceeds, if any, we will receive from the sale;
- any over-allotment or other options under which underwriters may purchase additional securities from us or the selling stockholder;
- any agency fees or underwriting discounts and other items constituting agents’ or underwriters’ compensation;
- any public offering price;
- any discounts or concessions allowed or reallocated or paid to dealers; and
- any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement will be underwriters of the securities offered by the prospectus supplement.

If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We or the selling stockholder may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement, other than securities covered by any over-allotment or other option. Any public offering price and any discounts or concessions allowed or reallocated or paid to dealers may change from time to time. We or the selling stockholder may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement, naming the underwriter, the nature of any such relationship.

We or the selling stockholder may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions we or the selling stockholder will pay the agent in an applicable prospectus supplement. Unless the prospectus supplement states otherwise, our or the selling stockholder’s agent will act on a best-efforts basis for the period of its appointment.

We or the selling stockholder may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us or the selling stockholder at the public offering price set

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forth in an applicable prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we or the selling stockholder must pay for solicitation of these contracts in the prospectus supplement.

We or the selling stockholder may provide agents and underwriters with indemnification against civil liabilities, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us or the selling stockholder in the ordinary course of business.

All securities we may offer, other than common stock, will be new issues of securities with no established trading market. Any underwriters may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities.

Any underwriter may engage in over-allotment, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum price. Syndicate-covering or other short-covering transactions involve purchases of the securities, either through exercise of the over-allotment option or in the open market after the distribution is completed, to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a stabilizing or covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Any underwriters or agents that are qualified market makers on the NASDAQ Global Market may engage in passive market making transactions in the common stock on the NASDAQ Global Market in accordance with Regulation M under the Exchange Act, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the common stock. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded. Passive market making may stabilize the market price of the securities at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

In compliance with guidelines of the Financial Industry Regulatory Authority, or FINRA, the maximum consideration or discount to be received by any FINRA member or independent broker dealer may not exceed 8% of the aggregate amount of the securities offered pursuant to this prospectus and any applicable prospectus supplement.

LEGAL MATTERS

Unless otherwise indicated in the applicable prospectus supplement, Cooley LLP, Palo Alto, California, will pass upon the validity of the securities offered by this prospectus and any supplement thereto. Additional legal matters may be passed upon for us or any underwriters, dealers or agents, by counsel that we name in the applicable prospectus supplement.

EXPERTS

The consolidated financial statements of Eiger BioPharmaceuticals, Inc. as of December 31, 2015 and 2014 and for each of the years in the three-year period ended December 31, 2015, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of Celladon Corporation appearing in Eiger BioPharmaceuticals, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2015 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of a registration statement we filed with the SEC. This prospectus does not contain all of the information set forth in the registration statement and the exhibits to the registration statement. For further information with respect to us and the securities we are offering under this prospectus, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. Neither we nor any agent, underwriter or dealer has authorized any person to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front page of this prospectus, regardless of the time of delivery of this prospectus or any sale of the securities offered by this prospectus.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file with the SEC at the SEC's public reference room at 100 F Street, N.E., Washington, D.C., 20549. Please call the SEC at 1.800.SEC.0330 for further information on the operation of the public reference room. Our SEC filings are also available to the public at the SEC's website at <http://www.sec.gov>.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” the information we file with it, which means that we can disclose important information to you by referring you to those documents instead of having to repeat the information in this prospectus. The information incorporated by reference is considered to be part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings (including those made after the date of the initial filing of the registration statement of which this prospectus is a part and prior to the effectiveness of such registration statement) we will make with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act until the termination of the offering of the shares covered by this prospectus (other than information furnished under Item 2.02 or Item 7.01 of Form 8-K):

- our Annual Report on Form 10-K for the year ended December 31, 2015 filed with the SEC on March 30, 2016;
- our Quarterly Report on Form 10-Q for the period ended March 31, 2016 filed with the SEC on May 16, 2016;
- our current reports on Form 8-K and 8-K/A (excluding any reports or portions thereof that are deemed to be furnished and not filed) filed with the SEC on January 6, 2016, January 19, 2016, February 10, 2016, February 16, 2016, February 29, 2016, March 9, 2016, March 14, 2016, March 21, 2016, March 23, 2016, March 28, 2016, April 1, 2016, April 20, 2016, April 28, 2016, May 13, 2016, June 16, 2016 and June 17, 2016; and
- the description of our common stock set forth in our registration statement on Form 8-A filed with the SEC on November 7, 2013, including any amendments thereto or reports filed for the purposes of updating this description.

You can request a copy of these filings, at no cost, by writing or telephoning us at the following address or telephone number:

Eiger BioPharmaceuticals, Inc.
350 Cambridge Avenue, Suite 350
Palo Alto, California 94306
Attn: Investor Relations

This prospectus is part of a registration statement we filed with the SEC. That registration statement and the exhibits filed along with the registration statement contain more information about us and the shares in this offering. Because information about documents referred to in this prospectus is not always complete, you should read the full documents which are filed as exhibits to the registration statement. You may read and copy the full registration statement and its exhibits at the SEC’s public reference rooms or its website.

The information contained in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, Dated June 17, 2016

PROSPECTUS

\$25,000,000



Common Stock

We have entered into a Controlled Equity Sales AgreementSM, or Sales Agreement, with Cantor Fitzgerald & Co., or Cantor Fitzgerald, relating to shares of our common stock offered by this prospectus. In accordance with the terms of the Sales Agreement, we may offer and sell shares of our common stock having an aggregate offering price of up to \$25,000,000 from time to time through Cantor Fitzgerald. Sales of the shares of common stock, if any, may be made on the NASDAQ Global Market at market prices and such other sales as agreed upon by us and Cantor Fitzgerald.

Our common stock is listed on the NASDAQ Global Market under the symbol "EIGR." On June 16, 2016, the last reported sale price of our common stock on the NASDAQ Global Market was \$20.14 per share.

Sales of our common stock, if any, under this prospectus may be made in sales deemed to be "at the market offerings" as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, or the Securities Act, including sales made directly on or through the NASDAQ Global Market, the existing trading market for our common stock, sales made to or through a market maker other than on an exchange or otherwise, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices, and/or any other method permitted by law. Cantor Fitzgerald is not required to sell any specific number or dollar amount of securities, but will act as a sales agent using commercially reasonable efforts consistent with its normal trading and sales practices, on mutually agreed terms between Cantor Fitzgerald and us. There is no arrangement for funds to be received in any escrow, trust or similar arrangement.

The compensation to Cantor Fitzgerald for sales of common stock sold pursuant to the Sales Agreement will be at fixed commission rate of 3% of the gross proceeds of any shares of common stock sold under the Sales Agreement. In connection with the sale of the common stock on our behalf, Cantor Fitzgerald may be deemed to be an "underwriter" within the meaning of the Securities Act and the compensation of Cantor Fitzgerald may be deemed to be underwriting commissions or discounts. We have also agreed to provide indemnification and contribution to Cantor Fitzgerald with respect to certain liabilities, including liabilities under the Securities Act or the Securities Exchange Act of 1934, as amended, or the Exchange Act.

Investing in our common stock involves a high degree of risk. Please read the information contained in and incorporated by reference under the heading "[Risk Factors](#)" on page 4 of this prospectus, and under similar headings in the other documents that are filed after the date hereof and incorporated by reference into this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.



, 2016.

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You should rely only on the information contained in, or incorporated by reference into, this prospectus and in any free writing prospectus that we may authorize for use in connection with this offering. We have not, and Cantor Fitzgerald has not, authorized any other person to provide you with different information. We are not, and Cantor Fitzgerald is not, making an offer to sell or seeking an offer to buy common stock under this prospectus in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, the documents incorporated by reference into this prospectus, and in any free writing prospectus that we may authorize for use in connection with this offering, is accurate only as of the date of those respective documents. Our business, financial condition, results of operations and prospects may have changed since those dates.

ABOUT THIS PROSPECTUS

This prospectus relates to the offering of our common stock. Before buying any of the common stock that we are offering, we urge you to carefully read this prospectus, together with the information incorporated by reference as described under the headings “Where You Can Find More Information” and “Incorporation of Certain Information by Reference” in this prospectus, and any free writing prospectus or prospectus supplement that we have authorized for use in connection with this offering. These documents contain important information that you should consider when making your investment decision.

This prospectus describes the terms of this offering of common stock and also adds to and updates information contained in the documents incorporated by reference into this prospectus. To the extent there is a conflict between the information contained in this prospectus, on the one hand, and the information contained in any document incorporated by reference into this prospectus that was filed with the Securities and Exchange Commission, or SEC, before the date of this prospectus, on the other hand, you should rely on the information in this prospectus. If any statement in one of these documents is inconsistent with a statement in another document having a later date—for example, a document incorporated by reference into this prospectus—the statement in the document having the later date modifies or supersedes the earlier statement.

Except as otherwise indicated herein or as the context otherwise requires, references in this prospectus to “Eiger,” “the company,” “we,” “us,” “our” and similar references refer to Eiger BioPharmaceuticals, Inc. and its consolidated subsidiaries.

This prospectus and the information incorporated herein by reference include trademarks, service marks and trade names owned by us or other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus or any related free writing prospectus are the property of their respective owners.

PROSPECTUS SUMMARY

The following summary highlights information contained elsewhere in this prospectus or incorporated by reference herein and does not contain all the information that may be important to purchasers of our common stock. For a more complete understanding of our company and this offering, we encourage you to read and consider carefully the more detailed information in this prospectus, including the information incorporated by reference into this prospectus, and the information included in any free writing prospectus that we may authorize for use in connection with this offering, including the information referred to under the heading “Risk Factors” on page 4 of this prospectus and in the documents incorporated by reference into this prospectus.

Eiger BioPharmaceuticals, Inc.

Overview

We are a clinical stage biopharmaceutical company focused on bringing to market novel product candidates for the treatment of orphan diseases. Since our founding in 2008, we have worked with investigators at Stanford University and evaluated a number of potential development candidates from pharmaceutical companies to comprise a pipeline of novel product candidates. Our resulting pipeline includes four Phase 2 candidates addressing four distinct orphan diseases. The programs have several aspects in common: the disease targets represent conditions of high medical need which are inadequately treated by current standard of care; the therapeutic approaches are supported by an understanding of disease biology and mechanism as elucidated by our academic research relationships; prior clinical experience with the product candidates guides an understanding of safety; and the development paths leverage the experience and capabilities of our experienced, commercially focused management team. The pipeline includes Sarasar[®] (lonafarnib) for HDV, PEG-interferon Lambda-1a (Lambda) for HDV, exendin (9-39) for severe hypoglycemia and Bestatin[™] (ubenimex) for PAH and lymphedema. We plan to deliver Phase 2 data on all five programs over the course of the next one to three years beginning in 2016.

Company Information

We were originally incorporated in California in December 2000 as Celladon Corporation. In April 2012 we reincorporated in Delaware, and in March 2016 we merged with Eiger Biopharmaceuticals, Inc. and changed our name to Eiger Biopharmaceuticals, Inc. Our principal executive offices are located at 350 Cambridge Avenue, Suite 350, Palo Alto, CA 94306, and our telephone number is 650-272-6138. Our corporate website address is www.eigerbio.com. The contents of our website are not incorporated into this Annual Report and our reference to the URL for our website is intended to be an inactive textual reference only.

Implications of Being an Emerging Growth Company

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012. We will remain an emerging growth company until the earlier of (1) the beginning of the first fiscal year following the fifth anniversary of our initial public offering, or January 1, 2020, (2) the beginning of the first fiscal year after our annual gross revenue is \$1.0 billion or more, (3) the date on which we have, during the previous three-year period, issued more than \$1.0 billion in non-convertible debt securities and (4) as of the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded \$700 million as of the end of the second quarter of that fiscal year.

For as long as we remain an “emerging growth company,” we may take advantage of certain exemptions from various reporting requirements that are applicable to public companies that are not “emerging growth companies” including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation and financial statements in our periodic reports and proxy statements, and exemptions from the requirements of

holding a nonbinding advisory vote to approve executive compensation and shareholder approval of any golden parachute payments not previously approved. We will take advantage of these reporting exemptions until we are no longer an “emerging growth company.”

Risks Associated with our Business

Our business is subject to numerous risks, as described under the heading “Risk Factors” contained in the applicable prospectus supplement and in any free writing prospectuses we have authorized for use in connection with a specific offering, and under similar headings in the documents that are incorporated by reference into this prospectus.

THE OFFERING

Common Stock Offered By Us	Shares of our common stock having an aggregate offering price of up to \$25 million.
Manner of Offering	“At the market offering” that may be made from time to time through our sales agent, Cantor Fitzgerald. See “Plan of Distribution” on page 14.
Use of proceeds	We currently intend to use the net proceeds from this offering primarily for research and development of product candidates, and for other general corporate purposes. See “Use of Proceeds” on page 7 of this prospectus.
Risk factors	Investing in our common stock involves significant risks. Please read the information contained in and incorporated by reference under the heading “Risk Factors” on page 4 of this prospectus and under similar headings in the other documents that are filed after the date hereof and incorporated by reference into this prospectus, together with the other information included in or incorporated by reference into this prospectus, before deciding whether to invest in our common stock.
NASDAQ Global Market Symbol	“EIGR”

RISK FACTORS

Investing in our securities involves a high degree of risk. Before deciding whether to invest in our securities, you should consider carefully the risks and uncertainties described under the heading “Risk Factors” contained in the applicable prospectus supplement and any related free writing prospectus, and discussed under the section titled “Risk Factors” contained in our most recent Annual Report on Form 10-K and in our most recent Quarterly Report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC, which are incorporated by reference into this prospectus in their entirety, together with other information in this prospectus, the documents incorporated by reference and any free writing prospectus that we may authorize for use in connection with this offering. The risks described in these documents are not the only ones we face, but those that we consider to be material. There may be other unknown or unpredictable economic, business, competitive, regulatory or other factors that could have material adverse effects on our future results. Past financial performance may not be a reliable indicator of future performance, and historical trends should not be used to anticipate results or trends in future periods. If any of these risks actually occurs, our business, financial condition, results of operations or cash flow could be seriously harmed. This could cause the trading price of our common stock to decline, resulting in a loss of all or part of your investment. Please also read carefully the section below titled “Forward-Looking Statements.”

Additional Risks Related to This Offering

Management will have broad discretion as to the use of the proceeds from this offering, and may not use the proceeds effectively.

Because we have not designated the amount of net proceeds from this offering to be used for any particular purpose, our management will have broad discretion as to the application of the net proceeds from this offering and could use them for purposes other than those contemplated at the time of the offering. Our management may use the net proceeds for corporate purposes that may not improve our financial condition or market value.

You may experience immediate and substantial dilution.

The offering price per share in this offering may exceed the net tangible book value per share of our common stock outstanding prior to this offering. Assuming that an aggregate of 1,241,310 shares of our common stock are sold at a price of \$20.14 per share, the last reported sale price of our common stock on the NASDAQ Global Market on June 16, 2016, for aggregate gross proceeds of \$25 million, and after deducting commissions and estimated offering expenses payable by us, you will experience immediate dilution of \$10.63 per share, representing the difference between our as adjusted net tangible book value per share as of March 31, 2016 after giving effect to this offering and the assumed offering price. The exercise of outstanding stock options and warrants will result in further dilution of your investment. See the section titled “Dilution” below for a more detailed illustration of the dilution you would incur if you participate in this offering.

FORWARD-LOOKING STATEMENTS

This prospectus, including the documents that we incorporate by reference herein, contains, and any applicable prospectus supplement or free writing prospectus including the documents we incorporate by reference therein may contain, forward-looking statements, including statements regarding our future financial condition, business strategy and plans and objectives of management for future operations. Forward-looking statements include all statements that are not historical facts. In some cases you can identify these statements by forward-looking words such as “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “could,” “would,” “project,” “plan,” “expect” or the negative or plural of these words or similar expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- the success, cost and timing of our product development activities and clinical trials;
- our ability to obtain and maintain regulatory approval for lonafarnib, exendin (9-39) and ubenimex, and any of our future product candidates, and any related restrictions, limitations, and/or warnings in the label of an approved product candidate;
- our ability to obtain funding for our operations, including funding necessary to complete all clinical trials that may potentially be required to file a new drug application, or NDA, and a Marketing Authorization Application, or MAA, for our product candidates;
- the commercialization of our product candidates, if approved;
- our plans to research, develop and commercialize our product candidates;
- our ability to attract collaborators with development, regulatory and commercialization expertise;
- the size and growth potential of the markets for our product candidates, and our ability to serve those markets;
- the rate and degree of market acceptance of our product candidates;
- regulatory developments in the United States and foreign countries;
- the performance of our third-party suppliers and manufacturers;
- the success of competing therapies that are or may become available;
- our ability to attract and retain key scientific or management personnel;
- the accuracy of our estimates regarding expenses, future revenues, capital requirements and needs for additional financing;
- our expectations regarding the period during which we qualify as an emerging growth company under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act; and
- our expectations regarding our ability to obtain and maintain intellectual property protection for our product candidates.

These statements reflect our current views with respect to future events and are based on assumptions and are subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. We discuss in greater detail many of these risks under the heading “Risk Factors” contained in the applicable prospectus supplement, in any free writing prospectuses we may authorize for use in connection with a specific offering, and in our most recent annual report on Form 10-K and in our most recent quarterly report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Also, these forward-looking statements represent our estimates and assumptions only as of the date of the document containing the applicable statement. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements. You should read this prospectus, any applicable prospectus supplement,

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together with the documents we have filed with the SEC that are incorporated by reference and any free writing prospectus that we may authorize for use in connection with this offering completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements.

USE OF PROCEEDS

We may issue and sell shares of our common stock having aggregate sales proceeds of up to \$25.0 million from time to time. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, commissions and proceeds to us, if any, are not determinable at this time. There can be no assurance that we will sell any shares under or fully utilize the Sales Agreement with Cantor Fitzgerald as a source of financing.

We will retain broad discretion over the use of the net proceeds from the sale of the securities offered hereby. We currently intend to use the net proceeds from this offering primarily for research and development of product candidates, and for other general corporate purposes. Pending these uses, we expect to invest the net proceeds in short-term, interest-bearing securities.

DILUTION

Our net tangible book value as of March 31, 2016 was approximately \$53.7 million, or \$7.74 per share. Net tangible book value per share is determined by dividing our total tangible assets, less total liabilities, by the number of shares of our common stock outstanding as of March 31, 2016. Dilution with respect to net tangible book value per share represents the difference between the amount per share paid by purchasers of shares of common stock in this offering and the net tangible book value per share of our common stock immediately after this offering.

After giving effect to the assumed sale of 1,241,310 shares of our common stock in this offering at an assumed offering price of \$20.14 per share, the last reported sale price of our common stock on the NASDAQ Global Market on June 16, 2016, and after deducting estimated offering commissions and estimated offering expenses payable by us, our as adjusted net tangible book value as of March 31, 2016 would have been approximately \$77.9 million, or \$9.51 per share. This represents an immediate increase in net tangible book value of \$1.77 per share to existing stockholders and immediate dilution of \$10.63 per share to investors purchasing our common stock in this offering at the public offering price. The following table illustrates this dilution on a per share basis:

Assumed public offering price per share	\$20.14
Net tangible book value per share of as March 31, 2016	\$7.74
Increase in net tangible book value per share attributable to this offering	<u>\$1.77</u>
As adjusted net tangible book value per share as of March 31, 2016, after giving effect to this offering	\$ 9.51
Dilution per share to new investors purchasing our common stock in this offering	<u>\$10.63</u>

The table above assumes for illustrative purposes that an aggregate of 1,241,310 shares of our common stock are sold during the term of the Sales Agreement with Cantor Fitzgerald at a price of \$20.14 per share, the last reported sale price of our common stock on The NASDAQ Global Market on June 16, 2016, for aggregate gross proceeds of \$25.0 million. The shares subject to the Sales Agreement with Cantor Fitzgerald are being sold from time to time at various prices. An increase of \$0.50 per share in the price at which the shares are sold from the assumed offering price of \$20.14 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$25.0 million during the term of the Sales Agreement with Cantor Fitzgerald is sold at that price, would increase our adjusted net tangible book value per share after the offering to \$9.55 per share and would increase the dilution in net tangible book value per share to new investors in this offering to \$11.09 per share, after deducting commissions and estimated aggregate offering expenses payable by us. A decrease of \$0.50 per share in the price at which the shares are sold from the assumed offering price of \$20.14 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$25.0 million during the term of the Sales Agreement with Cantor Fitzgerald is sold at that price, would decrease our adjusted net tangible book value per share after the offering to \$9.48 per share and would decrease the dilution in net tangible book value per share to new investors in this offering to \$10.16 per share, after deducting commissions and estimated offering expenses payable by us. This information is supplied for illustrative purposes only and may differ based on the actual offering price and the actual number of shares offered.

The above discussion and table are based on 6,945,401, shares outstanding as of March 31, 2016, and exclude as of that date:

- 336,515 shares of common stock issuable upon the exercise of outstanding stock options having a weighted average exercise price of \$23.12 per share;
- 10,180 shares of common stock issuable upon the exercise of outstanding warrants having a weighted average exercise price of \$84.15 per share; and
- 19,694 shares of common stock reserved for future issuance under the Eiger BioPharmaceuticals, Inc. 2009 Equity Incentive Plan;

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- 224,719 shares of common stock reserved for future issuance under the Celladon Corporation 2013 Equity Incentive Plan; and
- 41,024 shares of common stock reserved for future issuance under the Celladon Corporation 2013 Employee Stock Purchase Plan.

To the extent that options or warrants outstanding as of March 31, 2016 have been or may be exercised or other shares issued, investors purchasing our common stock in this offering may experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

DESCRIPTION OF CAPITAL STOCK

As of the date of this prospectus, our certificate of incorporation, authorizes us to issue up to 200,000,000 shares of common stock, \$0.001 par value per share, and 10,000,000 shares of preferred stock, \$0.001 par value per share. As of March 31, 2016, 6,945,401 shares of common stock were outstanding and no shares of preferred stock were outstanding.

The following summary describes the material terms of our capital stock. The description of capital stock is qualified by reference to our certificate of incorporation and our bylaws.

Common Stock

Voting Rights

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our certificate of incorporation and bylaws, our stockholders do not have cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends

Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of preferred stock.

Rights and Preferences

Holders of common stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

Preferred Stock

Under our certificate of incorporation, our board of directors is authorized by resolution to divide the preferred stock into series and, with respect to each series, to determine the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights, redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Our board of directors can, without stockholder approval but subject to the terms of the certificate of incorporation, issue preferred stock with voting and other rights that could adversely affect the voting power of the holders of our common stock and which could have certain anti-takeover effects. Before we may issue any series of preferred stock, our board of directors will be required to adopt resolutions creating and designating such series of preferred stock.

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The following summary of terms of our preferred stock is not complete. You should refer to the provisions of our certificate of incorporation and bylaws and the resolutions containing the terms of each class or series of the preferred stock which have been or will be filed with the SEC at or prior to the time of issuance of such class or series of preferred stock and described in the applicable prospectus supplement. The applicable prospectus supplement may also state that any of the terms set forth herein are inapplicable to such series of preferred stock, provided that the information set forth in such prospectus supplement does not constitute material changes to the information herein such that it alters the nature of the offering or the securities offered.

We will fix the designations, voting powers, preferences and rights of the preferred stock of each series we issue under this prospectus, as well as the qualifications, limitations or restrictions thereof, in the certificate of designation relating to that series. We will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of any certificate of designation that describes the terms of the series of preferred stock we are offering. We will describe in the applicable prospectus supplement the terms of the series of preferred stock being offered, including, to the extent applicable:

- the title and stated value;
- the number of shares we are offering;
- the liquidation preference per share;
- the purchase price;
- the dividend rate, period and payment date and method of calculation for dividends;
- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;
- the procedures for any auction and remarketing;
- the provisions for a sinking fund;
- the provisions for redemption or repurchase and any restrictions on our ability to exercise those redemption and repurchase rights;
- any listing of the preferred stock on any securities exchange or market;
- whether the preferred stock will be convertible into our common stock, and the conversion rate or conversion price, or how they will be calculated, and the conversion period;
- whether the preferred stock will be exchangeable into debt securities, and the exchange rate or exchange price, or how they will be calculated, and the exchange period;
- voting rights of the preferred stock;
- preemptive rights;
- restrictions on transfer, sale or other assignment;
- whether interests in the preferred stock will be represented by depositary shares;
- a discussion of material or special U.S. federal income tax considerations applicable to the preferred stock;
- the relative ranking and preferences of the preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs;
- any limitations on the issuance of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs; and
- any other specific terms, preferences, rights or limitations of, or restrictions on, the preferred stock.

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If we issue shares of preferred stock under this prospectus, the shares will be fully paid and non-assessable.

The issuance of preferred stock could adversely affect the voting power of holders of common stock and reduce the likelihood that common stockholders will receive dividend payments and payments upon liquidation. The issuance could have the effect of decreasing the market price of the common stock. The issuance of preferred stock also could have the effect of delaying, deterring or preventing a change in control of us.

Anti-Takeover Provisions

Certificate of Incorporation and Bylaws

Provisions of our amended and restated certificate of incorporation and amended and restated bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws:

- permit our board of directors to issue up to 10,000,000 shares of preferred stock, with any rights, preferences and privileges as they may designate (including the right to approve an acquisition or other change in control);
- provide that the authorized number of directors may be changed only by resolution adopted by a majority of the board of directors;
- provide that the board of directors or any individual director may only be removed with cause and the affirmative vote of the holders of at least 66 2/3% of the voting power of all of our then outstanding common stock;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law or subject to the rights of holders of preferred stock as designated from time to time, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner and also specify requirements as to the form and content of a stockholder's notice;
- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
- provide that special meetings of our stockholders may be called only by the chairman of the board, our Chief Executive Officer or by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exists any vacancies); and
- provide that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (1) any derivative action or proceeding brought on Celladon's behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of Celladon's directors or officers to Celladon or its stockholders, (3) any action asserting a claim against Celladon arising pursuant to any provision of the Delaware General Corporation Law or Celladon's certificate of incorporation or bylaws or (4) any action asserting a claim against Celladon governed by the internal affairs doctrine.

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Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder (as defined below), with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon closing of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an “interested stockholder” as an entity or person who, together with the person’s affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

A Delaware corporation may “opt out” of these provisions with an express provision in its certificate of incorporation. We have not opted out of these provisions, which may discourage or prevent mergers or other takeover or change of control attempts of our company.

Listing

Our common stock is listed on the NASDAQ Global Market under the symbol “EIGR.”

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer and Trust Company, LLC. The transfer agent and registrar’s address is 6201 15th Avenue, Brooklyn, New York 11219.

PLAN OF DISTRIBUTION

We have entered into a Controlled Equity OfferingSM Sales Agreement, or the Sales Agreement, with Cantor Fitzgerald under which we may issue and sell shares of our common stock having an aggregate gross sales price of up to \$25,000,000 from time to time through Cantor Fitzgerald acting as agent. The Sales Agreement has been filed as an exhibit to our registration statement on Form S-3 of which this prospectus forms a part.

Upon delivery of a placement notice and subject to the terms and conditions of the Sales Agreement, Cantor Fitzgerald may sell our common stock by any method permitted by law deemed to be an “at-the-market” offering as defined in Rule 415 promulgated under the Securities Act, including sales made directly on the NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. Cantor Fitzgerald may also sell our common stock by any other method permitted by law, including in privately negotiated transactions. We may instruct Cantor Fitzgerald not to sell common stock if the sales cannot be effected at or above the price designated by us from time to time. We or Cantor Fitzgerald may suspend the offering of common stock upon notice and subject to other conditions.

We will pay Cantor Fitzgerald commissions, in cash, for its services in acting as agent in the sale of our common stock. Cantor Fitzgerald will be entitled to compensation at a fixed commission rate of 3.0% of the gross sales price per share sold. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, commissions and proceeds to us, if any, are not determinable at this time. We have also agreed to reimburse Cantor Fitzgerald for certain specified expenses, including the fees and disbursements of its legal counsel, in an amount not to exceed \$50,000. We estimate that the total expenses for the offering, excluding compensation and reimbursement payable to Cantor Fitzgerald under the terms of the Sales Agreement, will be approximately \$125,000. Settlement for sales of common stock will occur on the third business day following the date on which any sales are made, or on some other date that is agreed upon by us and Cantor Fitzgerald in connection with a particular transaction, in return for payment of the net proceeds to us. Sales of our common stock as contemplated in this prospectus will be settled through the facilities of The Depository Trust Company or by such other means as we and Cantor Fitzgerald may agree upon. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

Cantor Fitzgerald will use its commercially reasonable efforts, consistent with its sales and trading practices, to solicit offers to purchase the common stock shares under the terms and subject to the conditions set forth in the Sales Agreement. In connection with the sale of the common stock on our behalf, Cantor Fitzgerald may be deemed to be an “underwriter” within the meaning of the Securities Act and the compensation of Cantor Fitzgerald may be deemed to be underwriting commissions or discounts. We have agreed to provide indemnification and contribution to Cantor Fitzgerald against certain civil liabilities, including liabilities under the Securities Act.

The offering of our common stock pursuant to the Sales Agreement will terminate upon the earlier of (1) the sale of all shares of our common stock subject to the Sales Agreement, or (2) termination of the Sales Agreement as permitted therein. We and Cantor Fitzgerald may each terminate the Sales Agreement at any time upon ten days’ prior notice.

Cantor Fitzgerald and its affiliates may provide various investment banking, commercial banking and other financial services for us and our affiliates, for which services they may in the future receive customary fees. To the extent required by Regulation M, Cantor Fitzgerald will not engage in any market making activities involving our common stock while the offering is ongoing under this prospectus in violation of Regulation M.

This prospectus in electronic format may be made available on a website maintained by Cantor Fitzgerald and Cantor Fitzgerald may distribute this prospectus electronically.

LEGAL MATTERS

Cooley LLP, Palo Alto, California, has passed upon the validity of the common stock offered by this prospectus. Goodwin Proctor LLP, New York, New York, is counsel for Cantor Fitzgerald in connection with this offering.

EXPERTS

The consolidated financial statements of Eiger BioPharmaceuticals, Inc. as of December 31, 2015 and 2014 and for each of the years in the three-year period ended December 31, 2015, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of Celladon Corporation appearing in Eiger BioPharmaceuticals, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2015 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of a registration statement we filed with the SEC. This prospectus does not contain all of the information set forth in the registration statement and the exhibits to the registration statement. For further information with respect to us and the securities we are offering under this prospectus, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. Neither we nor any agent, underwriter or dealer has authorized any person to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front page of this prospectus, regardless of the time of delivery of this prospectus or any sale of the securities offered by this prospectus.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file with the SEC at the SEC's public reference room at 100 F Street, N.E., Washington, D.C., 20549. Please call the SEC at 1.800.SEC.0330 for further information on the operation of the public reference room. Our SEC filings are also available to the public at the SEC's website at <http://www.sec.gov>.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” the information we file with it, which means that we can disclose important information to you by referring you to those documents instead of having to repeat the information in this prospectus. The information incorporated by reference is considered to be part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings (including those made after the date of the initial filing of the registration statement of which this prospectus is a part and prior to the effectiveness of such registration statement) we will make with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act until the termination of the offering of the shares covered by this prospectus (other than information furnished under Item 2.02 or Item 7.01 of Form 8-K):

- our Annual Report on Form 10-K for the year ended December 31, 2015 filed with the SEC on March 30, 2016;
- our Quarterly Report on Form 10-Q for the period ended March 31, 2016 filed with the SEC on May 16, 2016;
- our current reports on Form 8-K and 8-K/A (excluding any reports or portions thereof that are deemed to be furnished and not filed) filed with the SEC on January 6, 2016, January 19, 2016, February 10, 2016, February 16, 2016, February 29, 2016, March 9, 2016, March 14, 2016, March 21, 2016, March 23, 2016, March 28, 2016, April 1, 2016, April 20, 2016, April 28, 2016, May 13, 2016, June 16, 2016 and June 17, 2016; and
- the description of our common stock set forth in our registration statement on Form 8-A filed with the SEC on November 7, 2013, including any amendments thereto or reports filed for the purposes of updating this description.

You can request a copy of these filings, at no cost, by writing or telephoning us at the following address or telephone number:

Eiger BioPharmaceuticals, Inc.
350 Cambridge Avenue, Suite 350
Palo Alto, California 94306
Attn: Investor Relations

This prospectus is part of a registration statement we filed with the SEC. That registration statement and the exhibits filed along with the registration statement contain more information about us and the shares in this offering. Because information about documents referred to in this prospectus is not always complete, you should read the full documents which are filed as exhibits to the registration statement. You may read and copy the full registration statement and its exhibits at the SEC’s public reference rooms or its website.

\$25,000,000



Common Stock

Prospectus



, 2016

PART II**INFORMATION NOT REQUIRED IN THE PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth an estimate of the fees and expenses, other than the underwriting discounts and commissions, payable by us in connection with the issuance and distribution of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee and the FINRA filing fee.

SEC Registration Fee	\$ 12,905
FINRA Filing Fee	19,250
Legal Fees and Expenses	100,000
NASDAQ Global Market Listing Fees	40,000
Accounting Fees	100,000
Printing and Miscellaneous Fees	<u>27,845</u>
Total	<u>\$300,000</u>

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act of 1933, as amended. Our amended and restated certificate of incorporation provides for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and our amended and restated bylaws provide for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law.

We have entered into indemnification agreements with our directors and executive officers, whereby we have agreed to indemnify our directors and executive officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or executive officer was, or is threatened to be made, a party by reason of the fact that such director or executive officer is or was our director, officer, employee or agent, provided that such director or executive officer acted in good faith and in a manner that the director or executive officer reasonably believed to be in, or not opposed to, the our best interest. At present, there is no pending litigation or proceeding involving any of our directors or executive officers regarding which indemnification is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

We maintain insurance policies that indemnify our directors and officers against various liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, and the Securities Exchange Act of 1934, as amended, that might be incurred by any director or officer in his capacity as such.

The Sales Agreement by and between the Registrant and Cantor Fitzgerald & Co., or Cantor Fitzgerald, provides for indemnification by Cantor Fitzgerald of us, our directors, our officers who signed the registration statement and our controlling persons for some liabilities, including liabilities arising under the Securities Act. In addition, the underwriting agreement that we may enter into (Exhibit 1.1) may provide for indemnification by any underwriters of us, our directors, our officers who signed the registration statement and our controlling persons for some liabilities, including liabilities arising under the Securities Act.

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Item 16. Exhibits.

The list of exhibits is set forth under “Exhibit Index” at the end of this registration statement and is incorporated herein by reference.

Item 17. Undertakings

The undersigned registrants hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(i), (ii) and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(d) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a

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document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(e) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(f) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(g) That, for purposes of determining any liability under the Securities Act, (i) the information omitted from the form of prospectus filed as part of the registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be a part of the registration statement as of the time it was declared effective; and (ii) each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

(i) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Palo Alto, California, on June 17, 2016.

EIGER BIOPHARMACEUTICALS, INC.

By: /s/ David A. Cory
David A. Cory
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David A. Cory and James H. Welch, his or her true and lawful agent, proxy and attorney-in-fact, each acting alone, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to (i) act on, sign, and file with the SEC any and all amendments (including post-effective amendments) to this registration statement together with all schedules and exhibits thereto, (ii) act on, sign and file such certificates, instruments, agreements and other documents as may be necessary or appropriate in connection therewith, (iii) act on and file any supplement to any prospectus included in this registration statement or any such amendment or any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act, and (iv) take any and all actions which may be necessary or appropriate to be done, as fully for all intents and purposes as he or she might or could do in person, hereby approving, ratifying and confirming all that such agent, proxy and attorney-in-fact or any of his substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ David A. Cory</u> David A. Cory	President and Chief Executive Officer (<i>principal executive officer</i>)	June 17, 2016
<u>/s/ James H. Welch</u> James H. Welch	Chief Financial Officer (<i>principal financial and accounting officer</i>)	June 17, 2016
<u>/s/ Thomas J. Dietz</u> Thomas J. Dietz	Chairman of the Board of Directors	June 17, 2016
<u>/s/ Charles Bramlage</u> Charles Bramlage	Director	June 17, 2016
<u>/s/ Edgar G. Engleman</u> Edgar G. Engleman	Director	June 17, 2016
<u>/s/ Jeffrey S. Glenn</u> Jeffrey S. Glenn	Director	June 17, 2016
<u>/s/ Nina Kjellson</u> Nina Kjellson	Director	June 17, 2016

EXHIBIT INDEX

Exhibit No.	Description of Exhibit	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
1.1*	Form of Underwriting Agreement.					
1.2	Common Stock Sales Agreement dated as of June 17, 2016, between Registrant and Cantor Fitzgerald & Co.					X
3.1	Amended and Restated Certificate of Incorporation of Celladon Corporation	8-K	001-36183	3.1	02/10/2014	
3.2	Amended and Restated Bylaws of Celladon Corporation	8-K	001-36183	3.2	02/10/2014	
3.3	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Celladon Corporation	8-K	001-36183	3.1	03/23/2016	
3.4	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Celladon Corporation	8-K	001-36183	3.2	03/23/2016	
4.1	Form of Common Stock Certificate.	S-1/A	333-191688	4.1	10/29/2013	
4.2*	Form of Preferred Stock Certificate and Form of Certificate of Designation of Preferred Stock.					
4.3	Form of Indenture.					X
4.4*	Form of Debt Securities.					
4.5	Form of Common Stock Warrant Agreement and Warrant Certificate.					X
4.6	Form of Preferred Stock Warrant Agreement and Warrant Certificate.					X
4.7	Form of Debt Securities Warrant Agreement and Warrant Certificate.					X
5.1	Opinion of Cooley LLP.					X
10.1+	License Agreement, dated as of April 20, 2016, by and between the Registrant and Bristol-Myers Squibb Company.					X
10.2	Common Stock Purchase Agreement, dated as of April 20, 2016, by and between the Registrant and Bristol-Myers Squibb Company.					X
12.1	Statement of Computation of Ratio of Earnings to Fixed Charges.					X
23.1	Consent of KPMG LLP, independent registered public accounting firm.					X

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<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>Incorporated by Reference</u>				<u>Filed Herewith</u>
		<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	
23.2	Consent of Ernst & Young LLP, independent registered public accounting firm.					X
23.3	Consent of Cooley LLP (included in Exhibit 5.1).					X
24.1	Power of Attorney (see page II-4 of this registration statement).					X
25.1**	Statement of Eligibility of Trustee under the Debt Indenture.					

* To be filed by amendment or as an exhibit to a Current Report on Form 8-K and incorporated herein by reference, if applicable.

** To be filed separately under electronic form type 305B2, if applicable.

+ Confidential treatment requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

Eiger BioPharmaceuticals, Inc.
Shares of Common Stock
(par value \$0.001 per share)

Controlled Equity OfferingSM

Sales Agreement

June 17, 2016

Cantor Fitzgerald & Co.
499 Park Avenue
New York, NY 10022

Ladies and Gentlemen:

Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "**Company**"), confirms its agreement (this "**Agreement**") with Cantor Fitzgerald & Co. (the "**Agent**"), as follows:

1. **Issuance and Sale of Shares.** The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Agent shares of common stock (the "**Placement Shares**") of the Company, par value \$0.001 per share (the "**Common Stock**"); *provided, however*, that in no event shall the Company issue or sell through the Agent such number or dollar amount of Placement Shares that would (a) exceed the number or dollar amount of shares of Common Stock registered on the effective Registration Statement (defined below) pursuant to which the offering is being made, (b) exceed the number of authorized but unissued shares of Common Stock, (c) exceed the number or dollar amount of shares of Common Stock permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable) or (d) exceed the number or dollar amount of shares of Common Stock for which the Company has filed a Prospectus Supplement (defined below) (the lesser of (a), (b), (c) and (d), the "**Maximum Amount**"). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this **Section 1** on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that the Agent shall have no obligation in connection with such compliance. The issuance and sale of Placement Shares through the Agent will be effected pursuant to the Registration Statement filed by the Company and which will be declared effective by the Securities and Exchange Commission (the "**Commission**"), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue Common Stock.

The Company has filed or will file, in accordance with the provisions of the Securities Act of 1933, as amended (the "**Securities Act**") and the rules and regulations thereunder (the "**Securities Act Regulations**"), with the Commission a registration statement on Form S-3, including a base prospectus, relating to certain securities, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules and regulations thereunder. The Company has prepared a prospectus or a prospectus supplement to the base prospectus included

as part of the registration statement, which prospectus or prospectus supplement relates to the Placement Shares to be issued from time to time by the Company (the “**Prospectus Supplement**”). The Company will furnish to the Agent, for use by the Agent, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares to be issued from time to time by the Company. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable (which shall be a Prospectus Supplement), with respect to the Placement Shares. Except where the context otherwise requires, such registration statement(s), including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act Regulations or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act Regulations, is herein called the “**Registration Statement**.” The base prospectus or base prospectuses, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented, if necessary, by the Prospectus Supplement, in the form in which such prospectus or prospectuses and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act Regulations, together with the then issued Issuer Free Writing Prospectus(es) (defined below), is herein called the “**Prospectus**.”

Any reference herein to the Registration Statement, any Prospectus Supplement, Prospectus or any Issuer Free Writing Prospectus shall be deemed to refer to and include the documents, if any, incorporated by reference therein (the “**Incorporated Documents**”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, any Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act on or after the most-recent effective date of the Registration Statement, or the date of the Prospectus Supplement, Prospectus or such Issuer Free Writing Prospectus, as the case may be, and incorporated therein by reference. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include the most recent copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval System, or if applicable, the Interactive Data Electronic Application system when used by the Commission (collectively, “**EDGAR**”).

2. **Placements.** Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a “**Placement**”), it will notify the Agent by email notice (or other method mutually agreed to in writing by the parties) of the number of Placement Shares to be issued, the time period during which sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one day and any minimum price below which sales may not be made (a “**Placement Notice**”), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 3 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Agent set forth on Schedule 3, as such Schedule 3 may be amended from time to time. The Placement Notice shall be effective unless and until (i) the Agent declines to accept the terms contained therein for any

reason, in its sole discretion, which declination must occur within two (2) business days of the receipt of the Placement Notice, (ii) the entire amount of the Placement Shares thereunder have been sold, (iii) the Company suspends or terminates the Placement Notice or (iv) this Agreement has been terminated under the provisions of Section 13. The amount of any discount, commission or other compensation to be paid by the Company to the Agent in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 2. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by the Agent.

(a) Subject to the provisions of Section 5(a), the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the NASDAQ Global Market (the "Exchange"), to sell the Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Agent will provide written confirmation to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Placement Notice, the Agent may sell Placement Shares by any method permitted by law deemed to be an "at-the-market" offering as defined in Rule 415 of the Securities Act Regulations, including without limitation sales made directly on the Exchange, on any other existing trading market for the Common Stock or to or through a market maker. Subject to the terms of a Placement Notice, the Agent may also sell Placement Shares by any other method permitted by law, including but not limited to in privately negotiated transactions, subject to the prior written consent by the Company. "Trading Day" means any day on which Common Stock is traded on the Exchange.

(b) While a Placement Notice is in effect, neither the Agent nor any of its subsidiaries shall engage in (i) any short sale of any security of the Company, as defined in Regulation SHO or (ii) any market making, bidding, stabilization or other trading activity with regard to the Common Stock or related derivative securities if such activity would be prohibited under Regulation M or other anti-manipulation rules under the Securities Act.

4. Suspension of Sales. The Company or the Agent may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 3, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 3), suspend any sale of Placement Shares (a "Suspension"); *provided, however*, that such Suspension shall not affect or impair any party's

obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. While a Suspension is in effect any obligation under Sections 7(l), 7(m), and 7(n) with respect to the delivery of certificates, opinions, or comfort letters to the Agent, shall be waived. Each of the parties agrees that no such notice under this Section 4 shall be effective against any other party unless it is made to one of the individuals named on Schedule 3 hereto, as such Schedule may be amended from time to time.

5. Sale and Delivery to the Agent; Settlement.

(a) Sale of Placement Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent's acceptance of the terms of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Placement Shares as required under this Agreement and (iii) the Agent shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent and the Company.

(b) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the third (3rd) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a "**Settlement Date**"). The Agent shall notify the Company of each sale of Placement Shares no later than the opening of the Trading Day immediately following the Trading Day on which it has made sales of Placement Shares hereunder. The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the "**Net Proceeds**") will be equal to the aggregate sales price received by the Agent, after deduction for (i) the Agent's commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(c) Delivery of Placement Shares. On or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting the Agent's or its designee's account (provided the Agent shall have given the Company written notice of such designee at least one Trading Day prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Settlement Date, the Agent will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date.

The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, through no fault of the Agent, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 10(a) hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

(d) Denominations; Registration. Certificates for the Placement Shares, if any, shall be in such denominations and registered in such names as the Agent may request in writing at least one full Business Day (as defined below) before the Settlement Date. The certificates for the Placement Shares, if any, will be made available by the Company for examination and packaging by the Agent in The City of New York not later than noon (New York time) on the Business Day prior to the Settlement Date.

(e) Limitations on Offering Size. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares if, after giving effect to the sale of such Placement Shares, the aggregate gross sales proceeds of Placement Shares sold pursuant to this Agreement would exceed the lesser of (A) together with all sales of Placement Shares under this Agreement, the Maximum Amount, (B) the amount available for offer and sale under the currently effective Registration Statement and (C) the amount authorized from time to time to be issued and sold under this Agreement by the Company's board of directors, a duly authorized committee thereof or a duly authorized executive officer, and notified to the Agent in writing. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company's board of directors, a duly authorized committee thereof or a duly authorized executive committee, and notified to the Agent in writing.

6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with the Agent that as of the date of this Agreement and as of each Applicable Time (as defined below), unless such representation, warranty or agreement specifies a different time:

(a) Registration Statement and Prospectus. The Company and the transactions contemplated by this Agreement meet the requirements for and comply with the applicable conditions set forth in Form S-3 (including General Instructions I.A and I.B) under the Securities Act. The Registration Statement has been or will be filed with the Commission and has been or will be declared effective by the Commission under the Securities Act prior to the issuance of any Placement Notices by the Company. The Prospectus Supplement will name the Agent as the agent in the section entitled "Plan of Distribution." The Company has not received, and has no notice of, any order of the Commission preventing or suspending the use of the Registration Statement, or threatening or instituting proceedings for that purpose. The Registration Statement and the offer and sale of Placement Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said Rule. Any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement have been so described or filed. Copies of the Registration Statement, the

Prospectus, and any such amendments or supplements and all Incorporated Documents that were filed with the Commission on or prior to the date of this Agreement have been delivered, or are available through EDGAR, to the Agent and its counsel. The Company has not distributed and, prior to the later to occur of each Settlement Date and completion of the distribution of the Placement Shares, will not distribute any offering material in connection with the offering or sale of the Placement Shares other than the Registration Statement and the Prospectus and any Issuer Free Writing Prospectus (as defined below) to which the Agent has consented, any such consent not to be unreasonably withheld, conditioned or delayed. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is currently listed on the Exchange under the trading symbol "EIGR." The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act, delisting the Common Stock from the Exchange, nor has the Company received any notification that the Commission or the Exchange is contemplating terminating such registration or listing. To the Company's knowledge, it is in compliance with all applicable listing requirements of the Exchange.

(b) No Misstatement or Omission. The Registration Statement, when it becomes effective, and the Prospectus, and any amendment or supplement thereto, on the date of such Prospectus or amendment or supplement, conformed and will conform in all material respects with the requirements of the Securities Act. At each Settlement Date, the Registration Statement and the Prospectus, as of such date, will conform in all material respects with the requirements of the Securities Act. The Registration Statement, when it becomes effective, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus and any amendment and supplement thereto, on the date thereof and at each Applicable Time (defined below), did not or will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Incorporated Documents did not, and any further Incorporated Documents filed after the date of this Agreement will not, when filed with the Commission, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such document or necessary to make the statements in such document, in light of the circumstances under which they were made, not misleading. The foregoing shall not apply to statements in, or omissions from, any such document made in reliance upon, and in conformity with, information furnished to the Company by Agent specifically for use in the preparation thereof.

(c) Conformity with Securities Act and Exchange Act. The Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement thereto, and the Incorporated Documents, when such documents were or are filed with the Commission under the Securities Act or the Exchange Act or became or become effective under the Securities Act, as the case may be, conformed or will conform in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable.

(d) Financial Information. The consolidated financial statements of the Company included or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and the

Subsidiaries (as defined below) as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified (subject to normal year-end audit adjustments for interim financial statements) have been prepared in compliance with the requirements of the Securities Act and Exchange Act and in conformity with GAAP (as defined below) applied on a consistent basis during the periods involved (except for such adjustments to accounting standards and practices as are noted therein and except in the case of unaudited financial statements to the extent they may exclude footnotes or may be condensed or summary statements); the summary and selected financial data with respect to the Company and the Subsidiaries (as defined below) contained or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, or the Prospectus that are not included or incorporated by reference as required; the Company and the Subsidiaries (as defined below) do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not described in the Registration Statement (excluding the exhibits thereto), and the Prospectus; and all disclosures contained or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply, in all material respects, with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable.

(e) Conformity with EDGAR Filing. The Prospectus delivered to the Agent for use in connection with the sale of the Placement Shares pursuant to this Agreement will be identical to the versions of the Prospectus created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T.

(f) Organization. The Company and each of its Subsidiaries has been duly organized, validly existing as a corporation and in good standing under the laws of their respective jurisdictions of organization. The Company and each of its Subsidiaries are, and will be, duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such license or qualification, and have all corporate power and authority necessary to own or hold their respective properties and to conduct their respective businesses as described in the Registration Statement and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect or would reasonably be expected to have a material adverse effect on or affecting the assets, business, operations, earnings, properties, financial condition, prospects, stockholders' equity or results of operations of the Company and the Subsidiaries taken as a whole, or prevent or materially interfere with consummation of the transactions contemplated hereby (a "**Material Adverse Effect**").

(g) Subsidiaries. The subsidiaries set forth on Schedule 4 (collectively, the "**Subsidiaries**"), are the Company's only significant subsidiaries (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the Commission). Except as set forth in the Registration

Statement and in the Prospectus, the Company owns, directly or indirectly, all of the equity interests of the Subsidiaries free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, and all the equity interests of the Subsidiaries are validly issued and are fully paid, nonassessable and free of preemptive and similar rights. No Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary's capital stock, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of such Subsidiary's property or assets to the Company or any other Subsidiary of the Company.

(h) No Violation or Default. Neither the Company nor any of its Subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries are subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, no other party under any material contract or other agreement to which it or any of its Subsidiaries is a party is in default in any respect thereunder where such default would have a Material Adverse Effect.

(i) No Material Adverse Change. Subsequent to the respective dates as of which information is given in the Registration Statement, the Prospectus and the Free Writing Prospectuses, if any (including any Incorporated Document), there has not been (i) any Material Adverse Effect or the occurrence of any development that the Company reasonably expects will result in a Material Adverse Effect, (ii) other than as contemplated by this Agreement, any transaction which is material to the Company and the Subsidiaries taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or any Subsidiary, which is material to the Company and the Subsidiaries taken as a whole, (iv) any material change in the capital stock (other than as a result of the sale of Placement Shares) or outstanding long-term indebtedness of the Company or any of its Subsidiaries or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or any Subsidiary, other than in each case above (A) in the ordinary course of business or (B) as otherwise disclosed in the Registration Statement or Prospectus (including any document deemed incorporated by reference therein).

(j) Capitalization. The issued and outstanding shares of capital stock of the Company have been validly issued, are fully paid and nonassessable and, other than as disclosed in the Registration Statement or the Prospectus, are not subject to any preemptive rights, rights of first refusal or similar rights pursuant to the Company's charter, bylaws or any agreement or other instrument to which the Company is a party or by which the Company is bound. The Company has an authorized, issued and outstanding capitalization as set forth in the Registration Statement and the Prospectus as of the dates referred to therein (other than the grant of additional options or other equity awards under the Company's existing equity incentive plans, or changes in the number of outstanding shares of Common Stock of the Company due to the issuance of

shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof) and such authorized capital stock conforms in all material respects to the description thereof set forth in the Registration Statement and the Prospectus. The description of the securities of the Company in the Registration Statement and the Prospectus is complete and accurate in all material respects. Except as disclosed in or contemplated by the Registration Statement or the Prospectus, as of the date referred to therein, the Company does not have outstanding any options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or exchangeable for, or any contracts or commitments to issue or sell, any shares of capital stock or other securities.

(k) Authorization; Enforceability. The Company has full legal right, power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification and contribution provisions of Section 11 hereof may be limited by federal or state securities laws and public policy considerations in respect thereof.

(l) Authorization of Placement Shares. The Placement Shares, when issued and delivered pursuant to the terms approved by the board of directors of the Company or a duly authorized committee thereof, or a duly authorized executive officers, against payment therefor as provided herein, will be duly authorized, validly issued and fully paid and nonassessable, free and clear of any pledge, lien, encumbrance, security interest or other claim (other than any pledge, lien, encumbrance, security interest or other claim arising from an act of the purchaser), including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights, and will be registered pursuant to Section 12 of the Exchange Act. The Placement Shares, when issued, will conform in all material respects to the description thereof set forth in the Prospectus under the caption "Description of Capital Stock".

(m) No Consents Required. No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement, or the issuance and sale by the Company of the Placement Shares as contemplated by this Agreement, except for (i) the registration of the Placement Shares under the Securities Act; and (ii) such consents, approvals, authorizations, orders and registrations or qualifications as may be required under applicable state securities laws or by the by-laws and rules of the Financial Industry Regulatory Authority ("FINRA") or the Exchange in connection with the sale of the Placement Shares by the Agent.

(n) No Preferential Rights. Except as set forth in the Registration Statement and the Prospectus (including the Incorporated Documents), (i) no person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act (each, a "Person"), has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company, (ii) no Person has any preemptive rights, resale rights, rights of first refusal, rights of co-sale, or any other rights (whether pursuant to a "poison pill" provision or otherwise) to

purchase, from the Company, any Common Stock or shares of any other capital stock or other securities of the Company, (iii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Placement Shares, and (iv) no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Stock or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of the Registration Statement or the sale of the Placement Shares as contemplated thereby or otherwise.

(o) Independent Public Accounting Firm. Ernst & Young LLP (“**EY**”), whose report on the consolidated financial statements of the Company is filed with the Commission as part of the Company’s most recent Annual Report on Form 10-K filed with the Commission and incorporated by reference into the Registration Statement and the Prospectus, are and, during the periods covered by their report, were an independent registered public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). KPMG LLP (“**KPMG**”), whose report on the consolidated financial statements of the Company is filed with the Commission on Form 8-K/A on May 13, 2016, and incorporated by reference into the Registration Statement and the Prospectus, are and, during the periods covered by their report, were an independent registered public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the Company’s knowledge, after due and careful inquiry, each of EY and KPMG is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”) with respect to the Company during the period of their respective engagement.

(p) Enforceability of Agreements. All agreements between the Company and third parties expressly referenced in the Prospectus are legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state securities laws or public policy considerations in respect thereof.

(q) No Litigation. Except as set forth in the Registration Statement or the Prospectus, there are no pending legal, governmental or regulatory actions, suits or proceedings, nor, to the Company’s knowledge, any pending legal, governmental or regulatory audits or investigations to which the Company or a Subsidiary is a party or to which any property of the Company or any of its Subsidiaries is the subject that, individually or in the aggregate, would have a Material Adverse Effect and, to the Company’s knowledge, no such actions, suits, proceedings, audits or investigations are threatened or contemplated by any legal, governmental or regulatory authority or threatened by others that, individually or in the aggregate, would have a Material Adverse Effect; and (i) there are no current or pending legal, governmental or regulatory audits or investigations, actions, suits or proceedings that are required under the Securities Act to be described in the Prospectus that are not so described; and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement that are not so filed.

(r) Consents and Permits. Except as set forth in the Registration Statement and the Prospectus, the Company and each of its Subsidiaries have such permits, licenses,

patents, franchises, certificates of need and other approvals and other authorizations (the “**Regulatory Permits**”) issued by the appropriate domestic or foreign regional, federal, state, or local regulatory agencies or bodies necessary to conduct the business of the Company, including, without limitation, any Investigational New Drug Application (an “**IND**”) and/or New Drug Application (an “**NDA**”), as required by the U.S. Food and Drug Administration (the “**FDA**”), any authorizations issued by the Drug Enforcement Administration (the “**DEA**”), or any other authorizations issued by domestic or foreign regional, federal, state, or local agencies or bodies engaged in the regulation of pharmaceuticals such as those being developed by the Company and its Subsidiaries, except for any of the foregoing that would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect; the Company is in compliance in all material respects with the requirements of the Regulatory Permits, and all of the Regulatory Permits are valid and in full force and effect, in each case in all material respects, except where any invalidity, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; the Company has not received any written notice of proceedings relating to the revocation, termination, modification or impairment of rights of any of the Regulatory Permits that, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to result in a Material Adverse Effect; the Company has not failed to submit to the FDA any IND or NDA necessary to conduct the business of the Company, any such filings that were required to be made were in material compliance with applicable laws when filed, and no material deficiencies have been asserted by the FDA with respect to any such filings or submissions that were made.

(s) Regulatory Filings. Except as disclosed in the Registration Statement and the Prospectus, neither the Company nor any of its Subsidiaries has failed to file with the applicable regulatory authorities (including, without limitation, the FDA, or any foreign, federal, state, provincial or local governmental or regulatory authority performing functions similar to those performed by the FDA) any required filing, declaration, listing, registration, report or submission, except for such failures that, individually or in the aggregate, would not have a Material Adverse Effect; except as disclosed in the Registration Statement and the Prospectus, all such filings, declarations, listings, registrations, reports or submissions were in compliance with applicable laws when filed and no deficiencies have been asserted by any applicable regulatory authority with respect to any such filings, declarations, listings, registrations, reports or submissions, except for any deficiencies that, individually or in the aggregate, would not have a Material Adverse Effect. The Company has operated and currently is, in all material respects, in compliance with the United States Federal Food, Drug, and Cosmetic Act, all applicable rules and regulations of the FDA and other federal, state, local and foreign governmental bodies exercising comparable authority. The Company has no knowledge of any studies, tests or trials not described in the Prospectus the results of which reasonably call into question in any material respect the results of the studies, tests and trials described in the Prospectus.

(t) Intellectual Property. The Company and each of its Subsidiaries owns, possesses or has valid and enforceable licenses to use, or can acquire on reasonable terms, all Intellectual Property (as defined below) necessary for the conduct of the Company’s and its Subsidiaries’ business as now conducted, except as such failure to own, possess, or acquire such rights would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Furthermore, except as disclosed in the Registration Statement or the Prospectus (A) to the knowledge of the Company, there is no infringement, misappropriation or violation by

third parties of any such Intellectual Property; (B) there is no pending or, to the knowledge of the Company, threatened, action, suit, proceeding or claim by others challenging the Company's or any of its Subsidiaries' rights in or to any such Intellectual Property; (C) the Intellectual Property owned by the Company and its Subsidiaries, and to the knowledge of the Company, the Intellectual Property licensed to the Company and its Subsidiaries, has not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property; (D) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others that the Company or any of its Subsidiaries infringes, misappropriates or otherwise violates any Intellectual Property or other proprietary rights of others, and neither the Company nor any of its Subsidiaries has received any written notice of such claim; and (E) to the Company's knowledge, no employee of the Company or any of its Subsidiaries is in or has ever been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company or any of its Subsidiaries or actions undertaken by the employee while employed with the Company or any of its Subsidiaries, except, in the case of clauses (A), (B), (C), (D) and (E) above, for any such invalidity, unenforceability, infringement, violation, misappropriation, action, suit, proceeding or claim as would not, individually or in the aggregate, reasonably expected to result in a Material Adverse Effect. "**Intellectual Property**" shall mean all patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, domain names, technology, know-how and other intellectual property.

(u) **Clinical Studies.** To the Company's knowledge, the studies, tests and preclinical and clinical investigations conducted by or on behalf of the Company and described in the Prospectus were and, if still pending, are, in all material respects, being conducted in accordance with established protocols, procedures and controls pursuant to, where applicable, accepted professional scientific standards for products or product candidates comparable to those being developed by the Company, and all Applicable Laws and Authorizations, including, without limitation, the Federal Food, Drug, and Cosmetic Act and implementing regulations including good laboratory practice ("**GLP**") regulations (21 C.F.R. Part 58) if any such studies, tests or preclinical and clinical investigations are being conducted pursuant to GLP, and good clinical practice and IND requirements (21 C.F.R. Parts 50, 54, 56, and 312) if any such studies, tests or preclinical and clinical investigations were or are subject to good clinical practice regulations or were or are being conducted under an IND; the descriptions of the results of such studies, tests and trials contained in the Registration Statement and the Prospectus are accurate in all material respects and fairly present the data derived from such studies, tests and trials; except to the extent disclosed in the Registration Statement and the Prospectus, the Company is not aware of any studies, tests or trials the results of which the Company believes reasonably call into question the study, test, or trial results described or referred to in the Registration Statement and the Prospectus when viewed in the context in which such results are described and the clinical state of development; and neither the Company nor any of its Subsidiaries have received any written notices or correspondence from any Governmental Authority requiring the termination, suspension or material modification of any studies, tests or preclinical or clinical investigations conducted by or on behalf of the Company or any of its Subsidiaries.

(v) Market Capitalization. At the time the Registration Statement was or will be originally declared effective, the Company met or will meet the then applicable requirements for the use of Form S-3 under the Securities Act, including, but not limited to, Instruction I.B.6 of Form S-3. The aggregate market value of the outstanding voting and non-voting common equity (as defined in Securities Act Rule 405) of the Company held by persons other than affiliates of the Company (pursuant to Securities Act Rule 144, those that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the Company) (the “**Non-Affiliate Shares**”), was equal to or greater than \$75 million (calculated by multiplying (x) the highest price at which the common equity of the Company closed on the Exchange within 60 days of the date of the filing of the Registration Statement times (y) the number of Non-Affiliate Shares). The Company is not a shell company (as defined in Rule 405 under the Securities Act) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in Instruction I.B.6 of Form S-3) with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.

(w) No Material Defaults. Neither the Company nor any of the Subsidiaries has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act since the filing of its last Annual Report on Form 10-K, indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would have a Material Adverse Effect.

(x) Certain Market Activities. Neither the Company, nor any of the Subsidiaries, nor any of their respective directors, officers or controlling persons has taken, directly or indirectly, any action designed, or that has constituted or might reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares.

(y) Broker/Dealer Relationships. Neither the Company nor any of the Subsidiaries (i) is required to register as a “broker” or “dealer” in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a “person associated with a member” or “associated person of a member” (within the meaning set forth in the FINRA Manual).

(z) No Reliance. The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(aa) Taxes. The Company and each of its Subsidiaries have filed all federal, state, local and foreign income and other tax returns which have been required to be filed by the Company or a Subsidiary, or have properly requested extensions thereof, and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where the failure to so file or pay would not have a Material Adverse Effect. Except as otherwise disclosed in or contemplated by the Registration

Statement or the Prospectus, no tax deficiency has been determined adversely to the Company or any of its Subsidiaries which has had, or would have, individually or in the aggregate, a Material Adverse Effect. The Company has no knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted against it which would have a Material Adverse Effect.

(bb) Title to Real and Personal Property. Except as set forth in the Registration Statement or the Prospectus, the Company and its Subsidiaries have good and marketable title to all real property owned by them, good and valid title to all tangible personal property described in the Registration Statement or Prospectus as being owned by them that are material to the businesses of the Company or such Subsidiary, in each case free and clear of all liens, encumbrances and claims, except those matters that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries or (ii) would not, individually or in the aggregate, have a Material Adverse Effect. Any real or tangible personal property described in the Registration Statement or Prospectus as being leased by the Company and any of its Subsidiaries is held by them under valid, existing and enforceable leases, except those that (A) do not materially interfere with the use made or proposed to be made of such property by the Company or any of its Subsidiaries or (B) would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect. Each of the properties of the Company and its Subsidiaries complies with all applicable codes, laws and regulations (including, without limitation, building and zoning codes, laws and regulations and laws relating to access to such properties), except if and to the extent disclosed in the Registration Statement or Prospectus or except for such failures to comply that would not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries or otherwise have a Material Adverse Effect. None of the Company or its subsidiaries has received from any governmental or regulatory authorities any notice of any condemnation of, or zoning change affecting, the properties of the Company and its Subsidiaries, and the Company knows of no such condemnation or zoning change which is threatened, except for such that would not reasonably be expected to interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries or otherwise have a Material Adverse Effect, individually or in the aggregate.

(cc) Environmental Laws. Except as set forth in the Registration Statement or the Prospectus, the Company and its Subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the Registration Statement and the Prospectus; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, have a Material Adverse Effect.

(dd) Disclosure Controls. The Company and each of its Subsidiaries maintain systems of internal accounting controls designed to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company's internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting (other than as set forth in the Prospectus). Since the date of the latest audited financial statements of the Company included in the Prospectus, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting (other than as set forth in the Prospectus). The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the Company and designed such disclosure controls and procedures to provide reasonable assurance that material information relating to the Company and each of its Subsidiaries is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "Evaluation Date"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date and the disclosure controls and procedures were effective. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Securities Act) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls.

(ee) Sarbanes-Oxley. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(ff) Finder's Fees. Neither the Company nor any of the Subsidiaries has incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated, except as may otherwise exist with respect to Agent pursuant to this Agreement.

(gg) Labor Disputes. No labor disturbance by or dispute with employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company, is threatened which would result in a Material Adverse Effect.

(hh) Investment Company Act. Neither the Company nor any of the Subsidiaries is or, after giving effect to the offering and sale of the Placement Shares, will be an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended (the “**Investment Company Act**”).

(ii) Operations. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company or its Subsidiaries are subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Company (collectively, the “**Money Laundering Laws**”), except as would not result in a Material Adverse Effect; and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(jj) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its affiliates and any unconsolidated entity, including, but not limited to, any structural finance, special purpose or limited purpose entity (each, an “**Off-Balance Sheet Transaction**”) that could reasonably be expected to affect materially the Company’s liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission’s Statement about Management’s Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Prospectus which have not been described as required.

(kk) Underwriter Agreements. The Company is not a party to any agreement with an agent or underwriter for any other “at-the-market” or continuous equity transaction.

(ll) ERISA. To the knowledge of the Company, each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company and any of its Subsidiaries has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “**Code**”) (except to the extent where any non-compliance would not result in material liability to the Company); during the last six plan years, no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code

or Section 302 of ERISA, no “accumulated funding deficiency” as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

(mm) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) (a “**Forward-Looking Statement**”) contained in the Registration Statement and the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(nn) Agent Purchases. The Company acknowledges and agrees that the Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is in effect, *provided*, that (i) no such purchase or sales shall take place while a Placement Notice is in effect (except to the extent the Agent may engage in sales of Placement Shares purchased or deemed purchased from the Company as a “riskless principal” or in a similar capacity) and (ii) the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent.

(oo) Margin Rules. Neither the issuance, sale and delivery of the Placement Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(pp) Insurance. The Company and each of its Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company and each of its Subsidiaries reasonably believe are adequate for the conduct of their properties and as is customary for companies of similar size, engaged in similar businesses in similar industries.

(qq) No Improper Practices. (i) Neither the Company nor the Subsidiaries, nor to the Company’s knowledge, any of their respective executive officers has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other person charged with similar public or quasi-public duty in violation of any law or of the character required to be disclosed in the Prospectus; (ii) no relationship, direct or indirect, exists between or among the Company or any Subsidiary or any affiliate of any of them, on the one hand, and the directors, officers and stockholders of the Company or any Subsidiary, on the other hand, that is required by the Securities Act to be described in the Registration Statement and the Prospectus that is not so described; (iii) no relationship, direct or indirect, exists between or among the Company or any Subsidiary or any affiliate of them, on the one hand, and the directors, officers, or stockholders of the Company or any Subsidiary, on the other hand, that is required by the rules of FINRA to be described in the Registration Statement and the Prospectus that is not so described; (iv) except as described in the Registration Statement and the Prospectus, there are no material outstanding loans or advances or material guarantees of indebtedness by the Company or any Subsidiary to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them; and (v) the Company has not offered, or caused any

placement agent to offer, Common Stock to any person with the intent to influence unlawfully (A) a customer or supplier of the Company or any Subsidiary to alter the customer's or supplier's level or type of business with the Company or any Subsidiary or (B) a trade journalist or publication to write or publish favorable information about the Company or any Subsidiary or any of their respective products or services, and, (vi) neither the Company nor any Subsidiary nor, to the Company's knowledge, any employee or agent of the Company or any Subsidiary has made any payment of funds of the Company or any Subsidiary or received or retained any funds in violation of any law, rule or regulation (including, without limitation, the Foreign Corrupt Practices Act of 1977), which payment, receipt or retention of funds is of a character required to be disclosed in the Registration Statement or the Prospectus.

(rr) Status Under the Securities Act. The Company was not and is not an ineligible issuer as defined in Rule 405 under the Securities Act at the times specified in Rules 164 and 433 under the Securities Act in connection with the offering of the Placement Shares.

(ss) No Misstatement or Omission in an Issuer Free Writing Prospectus. Each Issuer Free Writing Prospectus, as of its issue date and as of each Applicable Time (as defined in Section 23 below), did not, does not and will not, through the completion of the Placement for which such Issuer Free Writing Prospectus is used or deemed used, include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any Incorporated Document that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Agent specifically for use therein.

(tt) No Conflicts. Neither the execution of this Agreement by the Company, nor the issuance, offering or sale of the Placement Shares, nor the consummation by the Company of any of the transactions contemplated herein, nor the compliance by the Company with the terms and provisions hereof will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived and (ii) such conflicts, breaches and defaults that would not have a Material Adverse Effect; nor will such action result (x) in any violation of the provisions of the organizational or governing documents of the Company, or (y) in any material violation of the provisions of any statute or any order, rule or regulation applicable to the Company or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company, other than in the case of (y) any violation that would not reasonably be expected to have a Material Adverse Effect.

(uu) Sanctions. (i) The Company represents that, neither the Company nor any of its Subsidiaries (collectively, the "Entity") nor, to the Company's knowledge, any director, officer, employee, agent, affiliate or representative of the Entity, is a government, individual, or entity (in this paragraph (uu), "Person") that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations

Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan and Syria).

(ii) The Entity represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) The Entity represents and covenants that, except as detailed in the Registration Statement and the Prospectus, for the past 5 years, it has not knowingly engaged in, is not now knowingly engaging in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(vv) Stock Transfer Taxes. On each Settlement Date, 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 Placement Shares to be sold 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 in all material respects.

(ww) Compliance with Laws. Each of the Company and its Subsidiaries: (A) is and at all times has been in compliance in all material respects with all statutes, rules, or regulations applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured or distributed by the Company or its Subsidiaries ("**Applicable Laws**"), except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; (B) has not received any FDA Form 483, notice of adverse finding, warning letter, untitled letter or other correspondence or notice from the FDA or any other Governmental Authority alleging or asserting noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("**Authorizations**"); (C) possesses all material Authorizations and such Authorizations are valid and in full force and effect and are not in material violation of any term of any such Authorizations; (D) except as set forth in the Registration Statement and the Prospectus (including the Incorporated Documents), has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority or third party alleging that any product operation or activity is in violation of any Applicable Laws or Authorizations and has no

knowledge that any such Governmental Authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (E) has not received notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority is considering such action; and (F) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct on the date filed (or were corrected or supplemented by a subsequent submission); and (G) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post-sale warning, "dear healthcare provider" letter, or other notice or action relating to the alleged lack of safety or efficacy of any product or any alleged product defect or violation and, to the Company's knowledge, no third party has initiated, conducted or intends to initiate any such notice or action.

(xx) Compliance with Occupational Laws. The Company and each of its Subsidiaries (A) is in compliance, in all material respects, with any and all applicable foreign, federal, state and local laws, rules, regulations, treaties, statutes and codes promulgated by any and all Governmental Authorities (including pursuant to the Occupational Health and Safety Act) relating to the protection of human health and safety in the workplace ("Occupational Laws"); (B) has received all material permits, licenses or other approvals required of it under applicable Occupational Laws to conduct its business as currently conducted; and (C) is in compliance, in all material respects, with all terms and conditions of such permit, license or approval. No action, proceeding, revocation proceeding, writ, injunction or claim is pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries relating to Occupational Laws and the Company does not have knowledge of any facts, circumstances or developments relating to its operations or cost accounting practices that could reasonably be expected to form the basis for or give rise to such actions, suits, investigations or proceedings.

Any certificate signed by an officer of the Company and delivered to the Agent or to counsel for the Agent pursuant to or in connection with this Agreement shall be deemed to be a representation and warranty by the Company, as applicable, to the Agent as to the matters set forth therein.

7. Covenants of the Company. The Company covenants and agrees with Agent that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), (i) the Company will notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus, other than documents incorporated by reference, has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon the Agent's request, any amendments or supplements to the Registration Statement or Prospectus

that, in the Agent's reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agent (*provided, however*, that the failure of the Agent to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and *provided, further*, that the only remedy the Agent shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus (except for documents incorporated by reference) relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to the Agent within a reasonable period of time before the filing and the Agent has not reasonably objected thereto in writing within two (2) Business Days (*provided, however*, that (A) the failure of the Agent to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement, and (B) the Company has no obligation to provide the Agent any advance copy of such filing or to provide the Agent an opportunity to object to such filing, if such filing does not name the Agent and does not relate to the transactions contemplated hereunder; and *provided, further*, that the only remedy the Agent shall have with respect to the failure by the Company to obtain such consent shall be to cease making sales under this Agreement) and the Company will furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed (the determination to file or not file any amendment or supplement with the Commission under this Section 7(a)), based on the Company's reasonable opinion or reasonable objections, shall be made exclusively by the Company).

(b) Notice of Commission Stop Orders. The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued. The Company will advise the Agent promptly after it receives any request by the Commission for any amendments to the Registration Statement or any amendment or supplements to the Prospectus or any Issuer Free Writing Prospectus or for additional information related to the offering of the Placement Shares or for additional information related to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus.

(c) Delivery of Prospectus; Subsequent Changes. During any period in which a Prospectus relating to the Placement Shares is required to be delivered by the Agent under the Securities Act with respect to the offer and sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the

Securities Act), the Company will comply in all material respects with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If the Company has omitted any information from the Registration Statement pursuant to Rule 430B under the Securities Act, it will use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430B and to notify the Agent promptly of all such filings. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Agent to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance; *provided, however*, that the Company may delay any such amendment or supplement if, in the judgment of the Company, it is in the best interests of the Company to do so.

(d) Listing of Placement Shares. Prior to the date of the first Placement Notice, the Company will use its reasonable best efforts to cause the Placement Shares to be listed on the Exchange.

(e) Delivery of Registration Statement and Prospectus. The Company will furnish to the Agent and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all Incorporated Documents) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all Incorporated Documents filed with the Commission during such period), in each case as soon as reasonably practicable and in such quantities as the Agent may from time to time reasonably request and, at the Agent's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; *provided, however*, that the Company shall not be required to furnish any document (other than the Prospectus) to the Agent to the extent such document is available on EDGAR.

(f) Earnings Statement. The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act.

(g) Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."

(h) Notice of Other Sales. Without the prior written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock,

warrants or any rights to purchase or acquire, Common Stock during the period beginning on the fifth (5th) Trading Day immediately prior to the date on which any Placement Notice is delivered to Agent hereunder and ending on the fifth (5th) Trading Day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice (or, if the Placement Notice has been terminated or suspended prior to the sale of all Placement Shares covered by a Placement Notice, the date of such suspension or termination); and will not directly or indirectly in any other “at-the-market” or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock prior to the later of the termination of this Agreement and the sixtieth (60th) day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice; *provided, however*, that such restrictions will not apply in connection with the Company’s issuance or sale of (i) Common Stock, options to purchase Common Stock, other equity awards to acquire Common Stock, or Common Stock issuable upon the exercise of options or other equity awards, pursuant to any equity incentive or benefits plan, stock ownership plan or dividend reinvestment plan (but not Common Stock subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding, and disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent and (iii) Common Stock or securities convertible into or exchangeable for shares of Common Stock as consideration for mergers, acquisitions, or offered and sold in a privately-negotiated transaction with vendors, customers, investors, strategic partners or potential strategic partners, other business combinations or strategic alliances occurring after the date of this Agreement which are not issued for capital raising purposes.

(i) Change of Circumstances. The Company will, at any time during the pendency of a Placement Notice advise the Agent promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to the Agent pursuant to this Agreement.

(j) Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by the Agent or its representatives in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company’s principal offices, as the Agent may reasonably request.

(k) Required Filings Relating to Placement of Placement Shares. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing date under Rule 424(b), a “**Filing Date**”), which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through the Agent, the Net Proceeds to the Company and the compensation payable by the Company to the Agent with respect to such Placement Shares, and (ii) deliver such number of

copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.

(l) Representation Dates; Certificate. (1) Prior to the date of the first Placement Notice and (2) each time the Company:

(i) files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;

(ii) files an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K);

(iii) files its quarterly reports on Form 10-Q under the Exchange Act; or

(iv) files a current report on Form 8-K containing amended financial information (other than information “furnished” pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a “**Representation Date**”);

the Company shall furnish the Agent (but in the case of clause (iv) above only if the Agent reasonably determines that the information contained in such Form 8-K is material) with a certificate dated the Representation Date, in the form and substance satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented. The requirement to provide a certificate under this Section 7(l) shall be automatically waived for any Representation Date occurring (1) at a time a Suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Placement Shares hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date and (2) at a time at which no Placement Notice is pending, which waiver shall continue until the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date), provided that a waiver under this clause (2) shall not apply for any Representation date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when a Suspension was in effect and did not provide the Agent with a certificate under this Section 7(l), then before the Company delivers the instructions for the sale of Placement Shares or the Agent sells any Placement Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 7(l) dated as of the date that the instructions for the sale of Placement Shares are issued.

(m) Legal Opinions. (1) Prior to the date of the first Placement Notice and (2) unless waived by the Agent, the within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause to be furnished to the Agent a written opinion of Cooley LLP (“**Company Counsel**”), or other counsel satisfactory to the Agent, in form and substance satisfactory to Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; *provided, however*, the Company shall be required to furnish to Agent no more than one opinion hereunder per calendar quarter and the Company shall not be required to furnish any such opinions or negative assurance letter if the Company does not intend to deliver a Placement Notice in such calendar quarter until such time as the Company delivers its next Placement Notice; *provided, further*, that in lieu of such opinions for subsequent periodic filings under the Exchange Act, counsel may furnish the Agent with a letter (a “**Reliance Letter**”) to the effect that the Agent may rely on a prior opinion delivered under this Section 7(m) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of the date of the Reliance Letter).

(n) Comfort Letter. (1) On or prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause its independent registered public accounting firm to furnish the Agent letters (the “**Comfort Letters**”), dated the date the Comfort Letter is delivered, which shall meet the requirements set forth in this Section 7(n); *provided*, that if requested by the Agent, the Company shall cause a Comfort Letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event requiring the filing of a Current Report on Form 8-K containing material financial information, including the restatement of the Company’s financial statements. The Comfort Letter from the Company’s independent registered public accounting firm shall be in a form and substance satisfactory to the Agent, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants’ “comfort letters” to underwriters in connection with registered public offerings (the first such letter, the “**Initial Comfort Letter**”) and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(o) Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of Placement Shares or (ii) sell, bid for, or purchase Placement Shares in violation of Regulation M, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Agent.

(p) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that neither it nor any of its Subsidiaries will be or become, at any time prior to the termination of this Agreement, required to register as an “investment company,” as such term is defined in the Investment Company Act.

(q) No Offer to Sell. Other than an Issuer Free Writing Prospectus approved in advance by the Company and the Agent in its capacity as agent hereunder, neither the Agent nor the Company (including its agents and representatives, other than the Agent in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.

(r) Blue Sky and Other Qualifications. The Company will use its commercially reasonable efforts, in cooperation with the Agent, to qualify the Placement Shares for offering and sale, or to obtain an exemption for the Placement Shares to be offered and sold, under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Agent may designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement); *provided, however*, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Placement Shares have been so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement).

(s) Sarbanes-Oxley Act. The Company and the Subsidiaries will maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company’s consolidated financial statements in accordance with generally accepted accounting principles, (iii) that receipts and expenditures of the Company are being made only in accordance with management’s and the Company’s directors’ authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company’s assets that could have a material effect on its financial statements. The Company and the Subsidiaries will maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission’s rules and forms, including, without limitation, controls and procedures designed

to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company or the Subsidiaries is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

(t) Secretary's Certificate; Further Documentation. On or prior to the date of the first Placement Notice, the Company shall deliver to the Agent a certificate of the Secretary of the Company and attested to by an executive officer of the Company, dated as of such date, certifying as to (i) the Certificate of Incorporation of the Company, (ii) the By-laws of the Company, (iii) the resolutions of the Board of Directors of the Company, or a duly authorized committee of the Board of Directors, authorizing the execution, delivery and performance of this Agreement and the issuance of the Placement Shares and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement. Within five (5) Trading Days of each Representation Date, the Company shall have furnished to the Agent such further information, certificates and documents as the Agent may reasonably request.

8. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation and filing of the Registration Statement, including any fees required by the Commission, and the printing or electronic delivery of the Prospectus as originally filed and of each amendment and supplement thereto, in such number as the Agent shall deem necessary, (ii) the printing and delivery to the Agent of this Agreement and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates, if any, for the Placement Shares to the Agent, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agent, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the fees and expenses of the Agent including but not limited to the fees and expenses of the counsel to the Agent, payable upon the execution of this Agreement, in an amount not to exceed \$50,000, (vi) the qualification or exemption of the Placement Shares under state securities laws in accordance with the provisions of Section 7(r) hereof, including filing fees, but excluding fees of the Agent's counsel, (vii) the printing and delivery to the Agent of copies of any Permitted Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto in such number as the Agent shall deem necessary, (viii) the preparation, printing and delivery to the Agent of copies of the blue sky survey, (ix) the fees and expenses of the transfer agent and registrar for the Common Stock, (x) the filing and other fees incident to any review by FINRA of the terms of the sale of the Placement Shares including the fees of the Agent's counsel (subject to the cap, set forth in clause (v) above), and (xi) the fees and expenses incurred in connection with the listing of the Placement Shares on the Exchange.

9. Conditions to Agent's Obligations. The obligations of the Agent hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the

Company of its obligations hereunder, to the completion by the Agent of a due diligence review satisfactory to it in its reasonable judgment, and to the continuing satisfaction (or waiver by the Agent in its sole discretion) of the following additional conditions:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the (i) resale of all Placement Shares issued to the Agent and not yet sold by the Agent and (ii) sale of all Placement Shares contemplated to be issued by any Placement Notice.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state Governmental Authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus if such post effective amendments or supplements have not been made and become effective; (ii) the issuance by the Commission or any other federal or state Governmental Authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, the Prospectus or material incorporated documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) No Misstatement or Material Omission. The Agent shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change in the authorized capital stock of the Company or any Material Adverse Effect or any development that would reasonably be expected to cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Agent (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it

impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Legal Opinion. The Agent shall have received the opinion of Company Counsel required to be delivered pursuant to Section 7(m) on or before the date on which such delivery of such opinion is required pursuant to Section 7(m).

(f) Comfort Letter. The Agent shall have received the Comfort Letter required to be delivered pursuant to Section 7(n) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(n).

(g) Representation Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(l) on or before the date on which delivery of such certificate is required pursuant to Section 7(l).

(h) No Suspension. Trading in the Common Stock shall not have been suspended on the Exchange and the Common Stock shall not have been delisted from the Exchange.

(i) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(l), the Company shall have furnished to the Agent such appropriate further information, certificates, letters and other documents as the Agent may reasonably request. All such certificates, letters and other documents will be in compliance with the provisions hereof.

(j) Securities Act Filings Made. All filings with the Commission with respect to the Placement Shares required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(k) Approval for Listing. The Placement Shares shall either have been (i) approved for listing on the Exchange, subject only to notice of issuance, or (ii) the Company shall have filed an application for listing of the Placement Shares on the Exchange at, or prior to, the issuance of any Placement Notice.

(l) FINRA. If applicable, FINRA shall have raised no objection to the terms of this offering and the amount of compensation allowable or payable to the Agent as described in the Prospectus.

(m) No Termination Event. There shall not have occurred any event that would permit the Agent to terminate this Agreement pursuant to Section 12(a).

10. Indemnification and Contribution.

(a) Company Indemnification. The Company agrees to indemnify and hold harmless the Agent, its affiliates and their respective partners, members, directors, officers, employees and agents and each person, if any, who controls the Agent or any affiliate within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; *provided* that (subject to Section 10(d) below) any such settlement is effected with the written consent of the Company, which consent shall not unreasonably be delayed or withheld; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission (whether or not a party), to the extent that any such expense is not paid under (i) or (ii) above,

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made solely in reliance upon and in conformity with the Agent Information (as defined below).

(a) Agent Indemnification. Agent agrees to indemnify and hold harmless the Company and its directors and each officer and director of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 10(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with information relating to the Agent and furnished to the Company in writing by the Agent expressly for use therein. The Company hereby acknowledges that the only information that the Agent has furnished to the Company expressly for use in the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus (or any amendment or supplement thereto) are the statements set forth in the [•] and [•] paragraphs under the caption “Plan of Distribution” in the Prospectus (the “Agent Information”).

(b) Procedure. Any party that proposes to assert the right to be indemnified under this Section 10 will, promptly after receipt of notice of commencement of any action

against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 10, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 10 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 10 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action or counsel reasonably satisfactory to the indemnified party, in each case, within a reasonable time after receiving notice of the commencement of the action; in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm (plus local counsel) admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 10 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an unconditional release of each indemnified party, in form and substance reasonably satisfactory to such indemnified party, from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(c) Settlement Without Consent if Failure to Reimburse. If an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for reasonable fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 10(a)(ii) effected without its written consent if (1) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (2) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (3) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(d) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 10 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or the Agent, the Company and the Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than the Agent, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and the Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the other hand. The relative benefits received by the Company on the one hand and the Agent on the other hand shall be deemed to be in the same proportion as the total net proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by the Agent (before deducting expenses) from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this Section 10(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 10(d) shall be deemed to include, for the purpose of this Section 10(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 10(c) hereof. Notwithstanding the foregoing provisions of this Section 10(d), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of

Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 10(d), any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of the Agent, will have the same rights to contribution as that party, and each director of the Company and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 10(d), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 10(d) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 10(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 10(c) hereof.

11. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 10 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of the Agent, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

12. Termination.

(a) The Agent may terminate this Agreement, by notice to the Company, as hereinafter specified at any time (1) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any change, or any development or event involving a prospective change, in the condition, financial or otherwise, or in the business, properties, earnings, results of operations or prospects of the Company and its Subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, which individually or in the aggregate, in the sole judgment of the Agent is material and adverse and makes it impractical or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (2) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (3) if trading in the Common Stock has been suspended or limited by the Commission or the Exchange, or if trading generally on the Exchange has been suspended or limited, or minimum prices for trading have been fixed on the Exchange, (4) if any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market shall have occurred and be continuing, (5) if a major disruption of securities settlements or clearance services in the United States shall have occurred and be continuing, or

(6) if a banking moratorium has been declared by either U.S. Federal or New York authorities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8 (Payment of Expenses), Section 10 (Indemnification and Contribution), Section 11 (Representations and Agreements to Survive Delivery), Section 17 (Governing Law and Time; Waiver of Jury Trial) and Section 18 (Consent to Jurisdiction) hereof shall remain in full force and effect notwithstanding such termination. If the Agent elects to terminate this Agreement as provided in this Section 12(a), the Agent shall provide the required notice as specified in Section 13 (Notices).

(b) The Company shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 11, Section 12, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such termination.

(c) The Agent shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 12, Section 17, Section 18 and Section 19 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 13, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agent on the terms and subject to the conditions set forth herein; provided that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 12(a), (b), (c) or (d) above or otherwise by mutual agreement of the parties; *provided, however*, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 8, Section 10, Section 11, Section 17 and Section 18 shall remain in full force and effect.

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided, however*, that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

13. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified, and if sent to the Agent, shall be delivered to:

Cantor Fitzgerald & Co.
499 Park Avenue
New York, NY 10022
Attention: Capital Markets/Jeffrey Lumby
Facsimile: (212) 307-3730

with copies to:

Cantor Fitzgerald & Co.
499 Park Avenue
New York, NY 10022
Attention: General Counsel
Facsimile: (212) 829-4708

and with a copy to:

Goodwin Procter LLP
620 8th Avenue
New York, NY 10036
Attention: Michael Maline
Facsimile: (646) 558-4145

and if to the Company, shall be delivered to:

Eiger BioPharmaceuticals, Inc.
350 Cambridge Avenue
Suite 350
Attention: James Welch
Facsimile: (650) 618-1621

with a copy to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304
Attention: Glen Sato
Facsimile: (650) 849-7400

Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day or, if such day is not a Business Day, on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, "**Business Day**" shall mean any day on which the Exchange and commercial banks in the City of New York are open for business.

An electronic communication ("**Electronic Notice**") shall be deemed written notice for purposes of this Section 13 if sent to the electronic mail address specified by the receiving party

under separate cover. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form (“**Nonelectronic Notice**”) which shall be sent to the requesting party within ten (10) days of receipt of the written request for Nonelectronic Notice.

14. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Company and the Agent and their respective successors and the parties referred to in Section 10 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; *provided, however*, that the Agent may assign its rights and obligations hereunder to an affiliate thereof without obtaining the Company’s consent.

15. **Adjustments for Stock Splits.** The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

16. **Entire Agreement; Amendment; Severability; Waiver.** This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement. No implied waiver by a party shall arise in the absence of a waiver in writing signed by such party. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

17. **GOVERNING LAW AND TIME; WAIVER OF JURY TRIAL.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18. **CONSENT TO JURISDICTION.** EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile or electronic transmission.

20. Construction. The section and exhibit headings herein are for convenience only and shall not affect the construction hereof. References herein to any law, statute, ordinance, code, regulation, rule or other requirement of any Governmental Authority shall be deemed to refer to such law, statute, ordinance, code, regulation, rule or other requirement of any Governmental Authority as amended, reenacted, supplemented or superseded in whole or in part and in effect from time to time and also to all rules and regulations promulgated thereunder.

21. Permitted Free Writing Prospectuses. The Company represents, warrants and agrees that, unless it obtains the prior written consent of the Agent, and the Agent represents, warrants and agrees that, unless it obtains the prior written consent of the Company, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping. For the purposes of clarity, the parties hereto agree that all free writing prospectuses, if any, listed in Exhibit 21 hereto are Permitted Free Writing Prospectuses.

22. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) the Agent is acting solely as agent in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not the Agent has advised or is advising the Company on other matters, and the Agent has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;

(b) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) neither the Agent nor its affiliates have provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;

(d) it is aware that the Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent and its affiliates have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(e) it waives, to the fullest extent permitted by law, any claims it may have against the Agent or its affiliates for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Placement Shares under this Agreement and agrees that the Agent and its affiliates shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company, other than in respect of the Agent's obligations under this Agreement and to keep information provided by the Company to the Agent and the Agent's counsel confidential to the extent not otherwise publicly available; provided, however, the Agent may, if requested by any governmental, regulatory or self-regulatory agency or authority having or asserting jurisdiction over such person or entity or in connection with a legal process, disclose such information or the existence or nature of the Project or discussions between the parties without notice to or consent from the Providing Party, without causing a breach of this Agreement

23. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

"Applicable Time" means (i) each Representation Date and (ii) the time of each sale of any Placement Shares pursuant to this Agreement.

"Governmental Authority" means (i) any federal, provincial, state, local, municipal, national or international government or governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court, tribunal, arbitrator or arbitral body (public or private); (ii) any self-regulatory organization; or (iii) any political subdivision of any of the foregoing.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Placement Shares that (1) is required to be filed with the Commission by the Company, (2) is a “road show” that is a “written communication” within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (3) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g) under the Securities Act Regulations.

“Rule 164,” “Rule 172,” “Rule 405,” “Rule 415,” “Rule 424,” “Rule 424(b),” “Rule 430B,” and **“Rule 433”** refer to such rules under the Securities Act Regulations.

All references in this Agreement to financial statements and schedules and other information that is “contained,” “included” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR; and all references in this Agreement to “supplements” to the Prospectus shall include, without limitation, any supplements, “wrappers” or similar materials prepared in connection with any offering, sale or private placement of any Placement Shares by the Agent outside of the United States.

[Signature Page Follows]

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

EIGER BIOPHARMACEUTICALS, INC.

By: /s/ James Welch

Name: James Welch

Title: Chief Financial Officer

ACCEPTED as of the date first-above written:

CANTOR FITZGERALD & CO.

By: /s/ Jeffrey Lumby

Name: Jeffrey Lumby

Title: Senior Managing Director

[SIGNATURE PAGE SALES AGREEMENT]

SCHEDULE 1

Form of Placement Notice

From: Eiger BioPharmaceuticals, Inc.

To: Cantor Fitzgerald & Co.
Attention: [•]

Subject: Placement Notice

Date: [•], 20116

Ladies and Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Sales Agreement between Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "**Company**"), and Cantor Fitzgerald & Co. ("**Agent**"), dated [•], 2016, the Company hereby requests that the Agent sell up to [•] of the Company's common stock, par value \$0.001 per share, at a minimum market price of \$[•] per share, during the time period beginning [month, day, time] and ending [month, day, time].

SCHEDULE 2

Compensation

The Company shall pay to the Agent in cash, upon each sale of Placement Shares pursuant to this Agreement, an amount equal to 3.0% of the aggregate gross proceeds from each sale of Placement Shares.

SCHEDULE 3

Notice Parties

The Company

David Cory (dcory@eigerbio.com)

Jim Welch (jwelch@eigerbio.com)

Amber Reynolds (areynold@eigerbio.com)

The Agent

Jeffrey Lumby (jlumby@cantor.com)

Josh Feldman (jfeldman@cantor.com)

Sameer Vasudev (svasudev@cantor.com)

With copies to:

CFControlledEquityOffering@cantor.com

SCHEDULE 4

Subsidiaries

None

Form of Representation Date Certificate Pursuant to Section 7(l)

The undersigned, the duly qualified and elected [•], of Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "Company"), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(l) of the Sales Agreement, dated [•], 2016 (the "Sales Agreement"), between the Company and Cantor Fitzgerald & Co., that to the best of the knowledge of the undersigned:

(i) The representations and warranties of the Company in Section 6 of the Sales Agreement (A) to the extent such representations and warranties are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date, and (B) to the extent such representations and warranties are not subject to any qualifications or exceptions, are true and correct in all material respects as of the date hereof as if made on and as of the date hereof; *provided, however*, that such representations and warranties also shall be qualified by the disclosure included or incorporated by reference in the Registration Statement and Prospectus; and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreement at or prior to the date hereof.

EIGER BIOPHARMACEUTICALS

By: _____

Name: _____

Title: _____

Date: [•]

Permitted Free Writing Prospectus

[None.]

EIGER BIOPHARMACEUTICALS, INC.,
Issuer

AND

[TRUSTEE],
Trustee

FORM OF INDENTURE

Dated as of [●], 20____

Debt Securities

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INDENTURE

INDENTURE, dated as of [●], 20____, among EIGER BIOPHARMACEUTICALS, INC., a Delaware corporation (the “*Company*”), and [TRUSTEE], as trustee (the “*Trustee*”):

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of debt securities (hereinafter referred to as the “*Securities*”), in an unlimited aggregate principal amount to be issued from time to time in one or more series as in this Indenture provided, as registered Securities without coupons, to be authenticated by the certificate of the Trustee;

WHEREAS, to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities by the holders thereof, it is mutually covenanted and agreed as follows for the equal and ratable benefit of the holders of Securities:

ARTICLE 1

DEFINITIONS

Section 1.01 Definitions of Terms.

The terms defined in this Section (except as in this Indenture or any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section and shall include the plural as well as the singular. All other terms used in this Indenture that are defined in the Trust Indenture Act of 1939, as amended, or that are by reference in such Act defined in the Securities Act of 1933, as amended (except as herein or any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this instrument.

“*Authenticating Agent*” means the Trustee or an authenticating agent with respect to all or any of the series of Securities appointed by the Trustee pursuant to Section 2.10.

“*Bankruptcy Law*” means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

“*Board of Directors*” means the Board of Directors (or the functional equivalent thereof) of the Company or any duly authorized committee of such Board.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors (or duly authorized committee thereof) and to be in full force and effect on the date of such certification.

“Business Day” means, with respect to any series of Securities, any day other than a day on which federal or state banking institutions in the Borough of Manhattan, the City of New York, or in the city of the Corporate Trust Office of the Trustee, are authorized or obligated by law, executive order or regulation to close.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Company” means **EIGER BIOPHARMACEUTICALS, INC.**, a corporation duly organized and existing under the laws of the State of Delaware, and, subject to the provisions of Article Ten, shall also include its successors and assigns.

“Corporate Trust Office” means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at _____.

“Custodian” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

“Defaulted Interest” has the meaning set forth in Section 2.03.

“Depository” means, with respect to Securities of any series for which the Company shall determine that such Securities will be issued as a Global Security, The Depository Trust Company, another clearing agency, or any successor registered as a clearing agency under the Exchange Act, or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to either Section 2.01 or 2.11.

“Event of Default” means, with respect to Securities of a particular series, any event specified in Section 6.01, continued for the period of time, if any, therein designated.

“Exchange Act” means the United States Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder.

“Global Security” means a Security issued to evidence all or a part of any series of Securities which is executed by the Company and authenticated and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“Governmental Obligations” means securities that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United

States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America that, in either case, are not callable or redeemable at the option of the issuer thereof at any time prior to the stated maturity of the Securities, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Governmental Obligation or a specific payment of principal of or interest on any such Governmental Obligation held by such custodian for the account of the holder of such depository receipt; provided, however, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Governmental Obligation or the specific payment of principal of or interest on the Governmental Obligation evidenced by such depository receipt.

“**herein**”, “**hereof**” and “**hereunder**”, and other words of similar import, refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into in accordance with the terms hereof and shall include the terms of particular series of Securities established as contemplated by Section 2.01.

“**Interest Payment Date**”, when used with respect to any installment of interest on a Security of a particular series, means the date specified in such Security or in a Board Resolution or in an indenture supplemental hereto with respect to such series as the fixed date on which an installment of interest with respect to Securities of that series is due and payable.

“**Officer**” means, with respect to the Company, the chairman of the Board of Directors, a chief executive officer, a president, a chief financial officer, a chief operating officer, any executive vice president, any senior vice president, any vice president, the treasurer or any assistant treasurer, the controller or any assistant controller or the secretary or any assistant secretary.

“**Officer’s Certificate**” means a certificate signed by any Officer. Each such certificate shall include the statements provided for in Section 13.07, if and to the extent required by the provisions thereof.

“**Opinion of Counsel**” means an opinion in writing subject to customary exceptions of legal counsel, who may be an employee of or counsel for the Company, that is delivered to the Trustee in accordance with the terms hereof. Each such opinion shall include the statements provided for in Section 13.07, if and to the extent required by the provisions thereof.

“**Outstanding**”, when used with reference to Securities of any series, means, subject to the provisions of Section 8.04, as of any particular time, all Securities of that series theretofore authenticated and delivered by the Trustee under this Indenture, except (a) Securities theretofore canceled by the Trustee or any paying agent, or delivered to the Trustee or any paying agent for cancellation or that have previously been canceled; (b) Securities or portions thereof for the payment or redemption of which moneys or Governmental Obligations in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the

Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent); provided, however, that if such Securities or portions of such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article Three, or provision satisfactory to the Trustee shall have been made for giving such notice; and (c) Securities in lieu of or in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07.

“**Person**” means any individual, corporation, partnership, joint venture, joint-stock company, limited liability company, association, trust, unincorporated organization, any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“**Predecessor Security**” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.07 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

“**Responsible Officer**” when used with respect to the Trustee means any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject and in each case who shall have direct responsibility for the administration of this Indenture.

“**Securities**” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securityholder**”, “**holder of Securities**”, “**registered holder**”, or other similar term, means the Person or Persons in whose name or names a particular Security is registered on the Security Register kept for that purpose in accordance with the terms of this Indenture.

“**Security Register**” and “**Security Registrar**” shall have the meanings as set forth in Section 2.05.

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Trustee**” means _____, and, subject to the provisions of Article Seven, shall also include its successors and assigns, and, if at any time there is more than one Person acting in such capacity hereunder, “Trustee” shall mean each such Person. The term “Trustee” as used with respect to a particular series of the Securities shall mean the trustee with respect to that series.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939, as amended.

“*U.S.A. Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended and signed into law October 26, 2001.

ARTICLE 2

ISSUE, DESCRIPTION, TERMS, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

Section 2.01 Designation and Terms of Securities.

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series up to the aggregate principal amount of Securities of that series from time to time authorized by or pursuant to a Board Resolution or pursuant to one or more indentures supplemental hereto. Prior to the initial issuance of Securities of any series, there shall be established in or pursuant to a Board Resolution, and set forth in an Officer’s Certificate, or established in one or more indentures supplemental hereto:

(1) the title of the Securities of the series (which shall distinguish the Securities of that series from all other Securities);

(2) any limit upon the aggregate principal amount of the Securities of that series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of that series);

(3) the maturity date or dates on which the principal of the Securities of the series is payable;

(4) the form of the Securities of the series including the form of the certificate of authentication for such series;

(5) the applicability of any guarantees;

(6) whether or not the Securities will be secured or unsecured, and the terms of any secured debt;

(7) whether the Securities rank as senior debt, senior subordinated debt, subordinated debt or any combination thereof, and the terms of any subordination;

(8) if the price (expressed as a percentage of the aggregate principal amount thereof) at which such Securities will be issued is a price other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or if applicable, the portion of the principal amount of such Securities that is convertible into another security or the method by which any such portion shall be determined;

(9) the interest rate or rates, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

(10) the Company's right, if any, to defer the payment of interest and the maximum length of any such deferral period;

(11) if applicable, the date or dates after which, or the period or periods during which, and the price or prices at which, the Company may at its option, redeem the series of Securities pursuant to any optional or provisional redemption provisions and the terms of those redemption provisions;

(12) the date or dates, if any, on which, and the price or prices at which the Company is obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the Securityholder's option to purchase, the series of Securities and the currency or currency unit in which the Securities are payable;

(13) the denominations in which the Securities of the series shall be issuable, if other than denominations of one thousand U.S. dollars (\$1,000) or any integral multiple thereof;

(14) any and all terms, if applicable, relating to any auction or remarketing of the Securities of that series and any security for the obligations of the Company with respect to such Securities and any other terms which may be advisable in connection with the marketing of Securities of that series;

(15) whether the Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities; the terms and conditions, if any, upon which such Global Security or Securities may be exchanged in whole or in part for other individual Securities; and the Depositary for such Global Security or Securities;

(16) if applicable, the provisions relating to conversion or exchange of any Securities of the series and the terms and conditions upon which such Securities will be so convertible or exchangeable, including the conversion or exchange price, as applicable, or how it will be calculated and may be adjusted, any mandatory or optional (at the Company's option or the holders' option) conversion or exchange features, the applicable conversion or exchange period and the manner of settlement for any conversion or exchange, which may, without limitation, include the payment of cash as well as the delivery of securities;

(17) if other than the full principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01;

(18) additions to or changes in the covenants applicable to the series of Securities being issued, including, among others, the consolidation, merger or sale covenant;

(19) additions to or changes in the Events of Default with respect to the Securities and any change in the right of the Trustee or the Securityholders to declare the principal, premium, if any, and interest, if any, with respect to such Securities to be due and payable;

(20) additions to or changes in or deletions of the provisions relating to covenant defeasance and legal defeasance;

(21) additions to or changes in the provisions relating to satisfaction and discharge of this Indenture;

(22) additions to or changes in the provisions relating to the modification of this Indenture both with and without the consent of Securityholders of Securities issued under this Indenture;

(23) the currency of payment of Securities if other than U.S. dollars and the manner of determining the equivalent amount in U.S. dollars;

(24) whether interest will be payable in cash or additional Securities at the Company's or the Securityholders' option and the terms and conditions upon which the election may be made;

(25) the terms and conditions, if any, upon which the Company shall pay amounts in addition to the stated interest, premium, if any and principal amounts of the Securities of the series to any Securityholder that is not a "United States person" for federal tax purposes;

(26) any restrictions on transfer, sale or assignment of the Securities of the series; and

(27) any other specific terms, preferences, rights or limitations of, or restrictions on, the Securities, any other additions or changes in the provisions of this Indenture, and any terms that may be required by us or advisable under applicable laws or regulations.

All Securities of any one series shall be substantially identical except as may otherwise be provided in or pursuant to any such Board Resolution or in any indentures supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution of the Company, a copy of an appropriate record of such action shall be certified by the secretary or an assistant secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officer's Certificate of the Company setting forth the terms of the series.

Securities of any particular series may be issued at various times, with different dates on which the principal or any installment of principal is payable, with different rates of interest, if any, or different methods by which rates of interest may be determined, with different dates on which such interest may be payable and with different redemption dates.

Section 2.02 Form of Securities and Trustee's Certificate.

The Securities of any series and the Trustee's certificate of authentication to be borne by such Securities shall be substantially of the tenor and purport as set forth in one or more indentures supplemental hereto or as provided in a Board Resolution, and set forth in an Officer's Certificate, and they may have such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange on which Securities of that series may be listed, or to conform to usage.

Section 2.03 Denominations: Provisions for Payment.

The Securities shall be issuable as registered Securities and in the denominations of one thousand U.S. dollars (\$1,000) or any integral multiple thereof, subject to Section 2.01(a)(13). The Securities of a particular series shall bear interest payable on the dates and at the rate specified with respect to that series. Subject to Section 2.01(a)(23), the principal of and the interest on the Securities of any series, as well as any premium thereon in case of redemption or repurchase thereof prior to maturity, and any cash amount due upon conversion or exchange thereof, shall be payable in the coin or currency of the United States of America that at the time is legal tender for public and private debt, at the office or agency of the Company maintained for that purpose. Each Security shall be dated the date of its authentication. Interest on the Securities shall be computed on the basis of a 360-day year composed of twelve 30-day months.

The interest installment on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date for Securities of that series shall be paid to the Person in whose name said Security (or one or more Predecessor Securities) is registered at the close of business on the regular record date for such interest installment. In the event that any Security of a particular series or portion thereof is called for redemption and the redemption date is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Security will be paid upon presentation and surrender of such Security as provided in Section 3.03.

Any interest on any Security that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date for Securities of the same series (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Company, at its election, as provided in clause (1) or clause (2) below:

(1) The Company may make payment of any Defaulted Interest on Securities to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Securityholder at his or her address as it appears in the Security Register (as hereinafter defined), not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered on such special record date.

(2) The Company may make payment of any Defaulted Interest on any Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Unless otherwise set forth in a Board Resolution or one or more indentures supplemental hereto establishing the terms of any series of Securities pursuant to Section 2.01 hereof, the term "regular record date" as used in this Section with respect to a series of Securities and any Interest Payment Date for such series shall mean either the fifteenth day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the first day of a month, or the first day of the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the fifteenth day of a month, whether or not such date is a Business Day.

Subject to the foregoing provisions of this Section, each Security of a series delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security of such series shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

Section 2.04 Execution and Authentications.

The Securities shall be signed on behalf of the Company by one of its Officers. Signatures may be in the form of a manual or facsimile signature.

The Company may use the facsimile signature of any Person who shall have been an Officer (at the time of execution), notwithstanding the fact that at the time the Securities shall be authenticated and delivered or disposed of such Person shall have ceased to be such an officer of the Company. The Securities may contain such notations, legends or endorsements required by law, stock exchange rule or usage. Each Security shall be dated the date of its authentication by the Trustee.

A Security shall not be valid until authenticated manually by an authorized signatory of the Trustee, or by an Authenticating Agent. Such signature shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture. At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a written order of the Company for the authentication and delivery of such Securities, signed by an Officer, and the Trustee in accordance with such written order shall authenticate and deliver such Securities.

Upon the Company's delivery of any such authentication order to the Trustee at any time after the initial issuance of Securities under this Indenture, the Trustee shall be provided with, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon, (1) an Opinion of Counsel or reliance letter and (2) an Officer's Certificate stating that all conditions precedent to the execution, authentication and delivery of such Securities are in conformity with the provisions of this Indenture.

The Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee.

Section 2.05 Registration of Transfer and Exchange.

(a) Securities of any series may be exchanged upon presentation thereof at the office or agency of the Company designated for such purpose, for other Securities of such series of authorized denominations, and for a like aggregate principal amount, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section. In respect of any Securities so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in exchange therefor the Security or Securities of the same series that the Securityholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

(b) The Company shall keep, or cause to be kept, at its office or agency designated for such purpose a register or registers (herein referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register the Securities and the transfers of Securities as in this Article provided and which at all reasonable times shall be open for inspection by the Trustee. The registrar for the purpose of registering Securities and transfer of Securities as herein provided shall be appointed as authorized by Board Resolution (the "Security Registrar").

Upon surrender for transfer of any Security at the office or agency of the Company designated for such purpose, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in the name of the transferee or transferees a new Security or Securities of the same series as the Security presented for a like aggregate principal amount.

All Securities presented or surrendered for exchange or registration of transfer, as provided in this Section, shall be accompanied (if so required by the Company or the Security Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Security Registrar, duly executed by the registered holder or by such holder's duly authorized attorney in writing.

(c) Except as provided pursuant to Section 2.01 pursuant to a Board Resolution, and set forth in an Officer's Certificate, or established in one or more indentures supplemental to this Indenture, no service charge shall be made for any exchange or registration of transfer of Securities, or issue of new Securities in case of partial redemption of any series or repurchase, conversion or exchange of less than the entire principal amount of a Security, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.06, Section 3.03(b) and Section 9.04 not involving any transfer.

(d) The Company shall not be required (i) to issue, exchange or register the transfer of any Securities during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of less than all the Outstanding Securities of the same series and ending at the close of business on the day of such mailing, nor (ii) to register the transfer of or exchange any Securities of any series or portions thereof called for redemption or surrendered for repurchase, but not validly withdrawn, other than the unredeemed portion of any such Securities being redeemed in part or not surrendered for repurchase, as the case may be. The provisions of this Section 2.05 are, with respect to any Global Security, subject to Section 2.11 hereof.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among depository participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.06 Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and the Trustee shall authenticate and deliver, temporary Securities (printed, lithographed or typewritten) of any authorized denomination. Such temporary Securities shall be substantially in the form of the definitive Securities in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every temporary Security of any series shall be executed by the

Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities of such series. Without unnecessary delay the Company will execute and will furnish definitive Securities of such series and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor (without charge to the holders), at the office or agency of the Company designated for the purpose, and the Trustee shall authenticate and such office or agency shall deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series, unless the Company advises the Trustee to the effect that definitive Securities need not be executed and furnished until further notice from the Company. Until so exchanged, the temporary Securities of such series shall be entitled to the same benefits under this Indenture as definitive Securities of such series authenticated and delivered hereunder.

Section 2.07 Mutilated, Destroyed, Lost or Stolen Securities.

In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company (subject to the next succeeding sentence) shall execute, and upon the Company's request the Trustee (subject as aforesaid) shall authenticate and deliver, a new Security of the same series, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substituted Security shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and the Trustee evidence to their satisfaction of the destruction, loss or theft of the applicant's Security and of the ownership thereof. The Trustee may authenticate any such substituted Security and deliver the same upon the written request or authorization of any officer of the Company. Upon the issuance of any substituted Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

In case any Security that has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and the Trustee such security or indemnity as they may require to save them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Security and of the ownership thereof.

Every replacement Security issued pursuant to the provisions of this Section shall constitute an additional contractual obligation of the Company whether or not the mutilated, destroyed, lost or stolen Security shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder. All Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, and shall preclude (to the extent lawful) any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.08 Cancellation.

All Securities surrendered for the purpose of payment, redemption, repurchase, exchange, registration of transfer or conversion shall, if surrendered to the Company or any paying agent (or any other applicable agent), be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be cancelled by it, and no Securities shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. On request of the Company at the time of such surrender, the Trustee shall deliver to the Company canceled Securities held by the Trustee. In the absence of such request the Trustee may dispose of canceled Securities in accordance with its standard procedures and deliver a certificate of disposition to the Company. If the Company shall otherwise acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 2.09 Benefits of Indenture.

Nothing in this Indenture or in the Securities, express or implied, shall give or be construed to give to any Person, other than the parties hereto and the holders of the Securities any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the holders of the Securities.

Section 2.10 Authenticating Agent.

So long as any of the Securities of any series remain Outstanding there may be an Authenticating Agent for any or all such series of Securities which the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, transfer or partial redemption, repurchase or conversion thereof, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. All references in this Indenture to the authentication of Securities by the Trustee shall be deemed to include authentication by an Authenticating Agent for such series. Each Authenticating Agent shall be acceptable to the Company and shall be a corporation that has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and that is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by federal or state authorities. If at any time any Authenticating Agent shall cease to be eligible in accordance with these provisions, it shall resign immediately.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time (and upon request by the Company shall) terminate the agency of any Authenticating Agent by giving written notice of

termination to such Authenticating Agent and to the Company. Upon resignation, termination or cessation of eligibility of any Authenticating Agent, the Trustee may appoint an eligible successor Authenticating Agent acceptable to the Company. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder as if originally named as an Authenticating Agent pursuant hereto.

Section 2.11 Global Securities.

(a) If the Company shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global Security that (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction (or if the Depository names the Trustee as its custodian, retained by the Trustee), and (iv) shall bear a legend substantially to the following effect: "Except as otherwise provided in Section 2.11 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository."

(b) Notwithstanding the provisions of Section 2.05, the Global Security of a series may be transferred, in whole but not in part and in the manner provided in Section 2.05, only to another nominee of the Depository for such series, or to a successor Depository for such series selected or approved by the Company or to a nominee of such successor Depository.

(c) If at any time the Depository for a series of the Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, or if an Event of Default has occurred and is continuing and the Company has received a request from the Depository or from the Trustee, this Section 2.11 shall no longer be applicable to the Securities of such series and the Company will execute, and subject to Section 2.04, the Trustee will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. In addition, the Company may at any time determine that the Securities of any series shall no longer be represented by a Global Security and that the provisions of this Section 2.11 shall no longer apply to the Securities of such series. In such event the Company will execute and, subject to Section 2.04, the Trustee, upon receipt of an Officer's Certificate evidencing such determination by the Company, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be canceled by the Trustee. Such Securities in

definitive registered form issued in exchange for the Global Security pursuant to this Section 2.11(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Depositary for delivery to the Persons in whose names such Securities are so registered.

Section 2.12 CUSIP Numbers.

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other elements of identification printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

ARTICLE 3

REDEMPTION OF SECURITIES AND SINKING FUND PROVISIONS

Section 3.01 Redemption.

The Company may redeem the Securities of any series issued hereunder on and after the dates and in accordance with the terms established for such series pursuant to Section 2.01 hereof.

Section 3.02 Notice of Redemption.

(a) In case the Company shall desire to exercise such right to redeem all or, as the case may be, a portion of the Securities of any series in accordance with any right the Company reserved for itself to do so pursuant to Section 2.01 hereof, the Company shall, or shall cause the Trustee to, give notice of such redemption to holders of the Securities of such series to be redeemed by mailing, first class postage prepaid (or with regard to any Global Security held in book entry form, by electronic mail), a notice of such redemption not less than 30 days and not more than 90 days before the date fixed for redemption of that series to such holders at their last addresses as they shall appear upon the Security Register, unless a shorter period is specified in the Securities to be redeemed. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the registered holder receives the notice. In any case, failure duly to give such notice to the holder of any Security of any series designated for redemption in whole or in part, or any defect in the notice, shall not affect the validity of the proceedings for the redemption of any other Securities of such series or any other series. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officer's Certificate evidencing compliance with any such restriction.

Each such notice of redemption shall identify the Securities to be redeemed (including CUSIP numbers, if any), specify the date fixed for redemption and the redemption price at which Securities of that series are to be redeemed, and shall state that payment of the redemption price of such Securities to be redeemed will be made at the office or agency of the Company, upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice, that from and after said date interest will cease to accrue and that the redemption is from a sinking fund, if such is the case. If less than all the Securities of a series are to be redeemed, the notice to the holders of Securities of that series to be redeemed in part shall specify the particular Securities to be so redeemed.

In case any Security is to be redeemed in part only, the notice that relates to such Security shall state the portion of the principal amount thereof to be redeemed, and shall state that on and after the redemption date, upon surrender of such Security, a new Security or Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

(b) If less than all the Securities of a series are to be redeemed, the Company shall give the Trustee at least 45 days' notice (unless a shorter notice shall be satisfactory to the Trustee) in advance of the date fixed for redemption as to the aggregate principal amount of Securities of the series to be redeemed, and thereupon the Trustee shall select, by lot or in such other manner as it shall deem appropriate and fair in its discretion and that may provide for the selection of a portion or portions (equal to one thousand U.S. dollars (\$1,000) or any integral multiple thereof) of the principal amount of such Securities of a denomination larger than \$1,000, the Securities to be redeemed and shall thereafter promptly notify the Company in writing of the numbers of the Securities to be redeemed, in whole or in part. The Company may, if and whenever it shall so elect, by delivery of instructions signed on its behalf by an Officer, instruct the Trustee or any paying agent to call all or any part of the Securities of a particular series for redemption and to give notice of redemption in the manner set forth in this Section, such notice to be in the name of the Company or its own name as the Trustee or such paying agent may deem advisable. In any case in which notice of redemption is to be given by the Trustee or any such paying agent, the Company shall deliver or cause to be delivered to, or permit to remain with, the Trustee or such paying agent, as the case may be, such Security Register, transfer books or other records, or suitable copies or extracts therefrom, sufficient to enable the Trustee or such paying agent to give any notice by mail that may be required under the provisions of this Section.

Section 3.03 Payment Upon Redemption.

(a) If the giving of notice of redemption shall have been completed as above provided, the Securities or portions of Securities of the series to be redeemed specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption and interest on such Securities or portions of Securities shall cease to accrue on and after the date fixed for redemption, unless the Company shall default in the payment of such redemption price and accrued interest with respect to any such Security or portion thereof. On presentation and surrender of such Securities on or after the date fixed for redemption at the place of payment specified in the notice, said Securities shall be paid and redeemed at the applicable redemption price for such series, together with interest accrued thereon to the date fixed for redemption (but if the date fixed for redemption is an Interest Payment Date, the interest installment payable on such date shall be payable to the registered holder at the close of business on the applicable record date pursuant to Section 2.03).

(b) Upon presentation of any Security of such series that is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and the office or agency where the Security is presented shall deliver to the holder thereof, at the expense of the Company, a new Security of the same series of authorized denominations in principal amount equal to the unredeemed portion of the Security so presented.

Section 3.04 Sinking Fund.

The provisions of Sections 3.04, 3.05 and 3.06 shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise specified as contemplated by Section 2.01 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.05. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

Section 3.05 Satisfaction of Sinking Fund Payments with Securities.

The Company (i) may deliver Outstanding Securities of a series and (ii) may apply as a credit Securities of a series that have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series, provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the redemption price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 3.06 Redemption of Securities for Sinking Fund.

Not less than 45 days prior to each sinking fund payment date for any series of Securities (unless a shorter period shall be satisfactory to the Trustee), the Company will deliver to the Trustee an Officer’s Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of the series, the portion thereof, if any, that is to be satisfied by delivering and crediting Securities of that series pursuant to Section 3.05 and the basis for such credit and will, together with such Officer’s Certificate, deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 3.03.

ARTICLE 4

COVENANTS

Section 4.01 Payment of Principal, Premium and Interest.

The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any) and interest on the Securities of that series at the time and place and in the manner provided herein and established with respect to such Securities. Payments of principal on the Securities may be made at the time provided herein and established with respect to such Securities by U.S. dollar check drawn on and mailed to the address of the Securityholder entitled thereto as such address shall appear in the Security Register, or U.S. dollar wire transfer to, a U.S. dollar account if such Securityholder shall have furnished wire instructions to the Trustee no later than 15 days prior to the relevant payment date. Payments of interest on the Securities may be made at the time provided herein and established with respect to such Securities by U.S. dollar check mailed to the address of the Securityholder entitled thereto as such address shall appear in the Security Register, or U.S. dollar wire transfer to, a U.S. dollar account if such Securityholder shall have furnished wire instructions in writing to the Security Registrar and the Trustee no later than 15 days prior to the relevant payment date.

Section 4.02 Maintenance of Office or Agency.

So long as any series of the Securities remain Outstanding, the Company agrees to maintain an office or agency with respect to each such series and at such other location or locations as may be designated as provided in this Section 4.02, where (i) Securities of that series may be presented for payment, (ii) Securities of that series may be presented as herein above authorized for registration of transfer and exchange, and (iii) notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be given or served, such designation to continue with respect to such office or agency until the Company shall, by written notice signed by any officer authorized to sign an Officer's Certificate and delivered to the Trustee, designate some other office or agency for such purposes or any of them. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, notices and demands. The Company initially appoints the Corporate Trust Office of the Trustee as its paying agent with respect to the Securities.

Section 4.03 Paying Agents.

(a) If the Company shall appoint one or more paying agents for all or any series of the Securities, other than the Trustee, the Company will cause each such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1) that it will hold all sums held by it as such agent for the payment of the principal of (and premium, if any) or interest on the Securities of that series (whether such sums have been paid to it by the Company or by any other obligor of such Securities) in trust for the benefit of the Persons entitled thereto;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor of such Securities) to make any payment of the principal of (and premium, if any) or interest on the Securities of that series when the same shall be due and payable;

(3) that it will, at any time during the continuance of any failure referred to in the preceding paragraph (a)(2) above, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent; and

(4) that it will perform all other duties of paying agent as set forth in this Indenture.

(b) If the Company shall act as its own paying agent with respect to any series of the Securities, it will on or before each due date of the principal of (and premium, if any) or interest on Securities of that series, set aside, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or interest so becoming due on Securities of that series until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of such action, or any failure (by it or any other obligor on such Securities) to take such action. Whenever the Company shall have one or more paying agents for any series of Securities, it will, prior to each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with the paying agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of this action or failure so to act.

(c) Notwithstanding anything in this Section to the contrary, (i) the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 11.05, and (ii) the Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any paying agent to pay, to the Trustee all sums held in trust by the Company or such paying agent, such sums to be held by the Trustee upon the same terms and conditions as those upon which such sums were held by the Company or such paying agent; and, upon such payment by the Company or any paying agent to the Trustee, the Company or such paying agent shall be released from all further liability with respect to such money.

Section 4.04 Appointment to Fill Vacancy in Office of Trustee.

The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.

ARTICLE 5

SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 Company to Furnish Trustee Names and Addresses of Securityholders.

The Company will furnish or cause to be furnished to the Trustee (a) within 15 days after each regular record date (as defined in Section 2.03) a list, in such form as the Trustee may reasonably require, of the names and addresses of the holders of each series of Securities as of such regular record date, provided that the Company shall not be obligated to furnish or cause to furnish such list at any time that the list shall not differ in any respect from the most recent list furnished to the Trustee by the Company and (b) at such other times as the Trustee may request in writing within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, that, in either case, no such list need be furnished for any series for which the Trustee shall be the Security Registrar.

Section 5.02 Preservation Of Information; Communications With Securityholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Securities contained in the most recent list furnished to it as provided in Section 5.01 and as to the names and addresses of holders of Securities received by the Trustee in its capacity as Security Registrar (if acting in such capacity).

(b) The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(c) Securityholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other Securityholders with respect to their rights under this Indenture or under the Securities, and, in connection with any such communications, the Trustee shall satisfy its obligations under Section 312(b) of the Trust Indenture Act in accordance with the provisions of Section 312(b) of the Trust Indenture Act.

Section 5.03 Reports by the Company.

(a) The Company will at all times comply with Section 314(a) of the Trust Indenture Act. The Company covenants and agrees to provide (which delivery may be via electronic mail) to the Trustee within 30 days, after the Company files the same with the Commission, copies of the annual reports and of the information, documents and other reports

(or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; provided, however, the Company shall not be required to deliver to the Trustee any correspondence filed with the Commission or any materials for which the Company has sought and received confidential treatment by the Commission; and provided further, that so long as such filings by the Company are available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR), or any successor system, such filings shall be deemed to have been filed with the Trustee for purposes hereof without any further action required by the Company. For the avoidance of doubt, a failure by the Company to file annual reports, information and other reports with the SEC within the time period prescribed thereof by the Commission shall not be deemed a breach of this Section 5.03.

(b) Delivery of reports, information and documents to the Trustee under Section 5.03 is for informational purposes only and the information and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein, or determinable from information contained therein including the Company's compliance with any of their covenants thereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate). The Trustee is under no duty to examine any such reports, information or documents delivered to the Trustee or filed with the SEC via EDGAR to ensure compliance with the provision of this Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein. The Trustee shall have no responsibility or duty whatsoever to ascertain or determine whether the above referenced filings with the SEC on EDGAR (or any successor system) has occurred.

Section 5.04 Reports by the Trustee.

(a) If required by Section 313(a) of the Trust Indenture Act, the Trustee, within sixty (60) days after each May 1, shall transmit by mail, first class postage prepaid, to the Securityholders, as their names and addresses appear upon the Security Register, a brief report dated as of such May 1, which complies with Section 313(a) of the Trust Indenture Act.

(b) The Trustee shall comply with Section 313(b) and 313(c) of the Trust Indenture Act.

(c) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with the Company, with each securities exchange upon which any Securities are listed (if so listed) and also with the Commission. The Company agrees to notify the Trustee when any Securities become listed on any securities exchange.

ARTICLE 6

REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

Section 6.01 Events of Default.

(a) Whenever used herein with respect to Securities of a particular series, “Event of Default” means any one or more of the following events that has occurred and is continuing:

(1) the Company defaults in the payment of any installment of interest upon any of the Securities of that series, as and when the same shall become due and payable, and such default continues for a period of 90 days; provided, however, that a valid extension of an interest payment period by the Company in accordance with the terms of any indenture supplemental hereto shall not constitute a default in the payment of interest for this purpose;

(2) the Company defaults in the payment of the principal of (or premium, if any, on) any of the Securities of that series as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise, or in any payment required by any sinking or analogous fund established with respect to that series; provided, however, that a valid extension of the maturity of such Securities in accordance with the terms of any indenture supplemental hereto shall not constitute a default in the payment of principal or premium, if any;

(3) the Company fails to observe or perform any other of its covenants or agreements with respect to that series contained in this Indenture or otherwise established with respect to that series of Securities pursuant to Section 2.01 hereof (other than a covenant or agreement that has been expressly included in this Indenture solely for the benefit of one or more series of Securities other than such series) for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a “Notice of Default” hereunder, shall have been given to the Company by the Trustee, by registered or certified mail, or to the Company and the Trustee by the holders of at least 25% in principal amount of the Securities of that series at the time Outstanding;

(4) the Company pursuant to or within the meaning of any Bankruptcy Law (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property or (iv) makes a general assignment for the benefit of its creditors; or

(5) a court of competent jurisdiction enters an order under any Bankruptcy Law that (i) is for relief against the Company in an involuntary case, (ii) appoints a Custodian of the Company for all or substantially all of its property or (iii) orders the liquidation of the Company, and the order or decree remains unstayed and in effect for 90 days.

(b) In each and every such case (other than an Event of Default specified in clause (4) or clause (5) above), unless the principal of all the Securities of that series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Securityholders), may declare the principal of (and premium, if any, on) and accrued and unpaid interest on all the Securities of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable. If an Event of Default specified in clause (4) or clause (5) above occurs, the principal of and accrued and unpaid interest on all the Securities of that series shall automatically be immediately due and payable without any declaration or other act on the part of the Trustee or the holders of the Securities.

(c) At any time after the principal of (and premium, if any, on) and accrued and unpaid interest on the Securities of that series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the holders of a majority in aggregate principal amount of the Securities of that series then Outstanding hereunder, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if: (i) the Company has paid or deposited with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of that series and the principal of (and premium, if any, on) any and all Securities of that series that shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the Securities of that series to the date of such payment or deposit) and the amount payable to the Trustee under Section 7.06, and (ii) any and all Events of Default under the Indenture with respect to such series, other than the nonpayment of principal on (and premium, if any, on) and accrued and unpaid interest on Securities of that series that shall not have become due by their terms, shall have been remedied or waived as provided in Section 6.06.

No such rescission and annulment shall extend to or shall affect any subsequent default or impair any right consequent thereon.

(d) In case the Trustee shall have proceeded to enforce any right with respect to Securities of that series under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case, subject to any determination in such proceedings, the Company and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee shall continue as though no such proceedings had been taken.

Section 6.02 Collection of Indebtedness and Suits for Enforcement by Trustee.

(a) The Company covenants that (i) in case it shall default in the payment of any installment of interest on any of the Securities of a series, or in any payment required by any sinking or analogous fund established with respect to that series as and when the same shall have become due and payable, and such default shall have continued for a period of 90 days, or (ii) in case it shall default in the payment of the principal of (or premium, if any, on) any of the Securities of a series when the same shall have become due and payable, whether upon maturity of the Securities of a series or upon redemption or upon declaration or otherwise then, upon

demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities of that series, the whole amount that then shall have been become due and payable on all such Securities for principal (and premium, if any) or interest, or both, as the case may be, with interest upon the overdue principal (and premium, if any) and (to the extent that payment of such interest is enforceable under applicable law) upon overdue installments of interest at the rate per annum expressed in the Securities of that series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 7.06.

(b) If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Securities of that series and collect the moneys adjudged or decreed to be payable in the manner provided by law or equity out of the property of the Company or other obligor upon the Securities of that series, wherever situated.

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or judicial proceedings affecting the Company, or its creditors or property, the Trustee shall have power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders of Securities of such series allowed for the entire amount due and payable by the Company under the Indenture at the date of institution of such proceedings and for any additional amount that may become due and payable by the Company after such date, and to collect and receive any moneys or other property payable or deliverable on any such claim, and to distribute the same after the deduction of the amount payable to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Securityholders, to pay to the Trustee any amount due it under Section 7.06.

(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to Securities of that series, may be enforced by the Trustee without the possession of any of such Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for payment to the Trustee of any amounts due under Section 7.06, be for the ratable benefit of the holders of the Securities of such series.

In case of an Event of Default hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in the Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of that series or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

Section 6.03 Application of Moneys Collected.

Any moneys collected by the Trustee pursuant to this Article with respect to a particular series of Securities shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of principal (or premium, if any) or interest, upon presentation of the Securities of that series, and notation thereon of the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 7.06;

SECOND: To the payment of the amounts then due and unpaid upon Securities of such series for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company or any other Person lawfully entitled thereto.

Section 6.04 Limitation on Suits.

No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (i) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to the Securities of such series specifying such Event of Default, as hereinbefore provided; (ii) the holders of not less than 25% in aggregate principal amount of the Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder; (iii) such holder or holders shall have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; (iv) the Trustee for 90 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding and (v) during such 90 day period, the holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request.

Notwithstanding anything contained herein to the contrary or any other provisions of this Indenture, the right of any holder of any Security to receive payment of the principal of (and premium, if any) and interest on such Security, as therein provided, on or after the respective due dates expressed in such Security (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder and by accepting a Security hereunder it is expressly understood, intended and covenanted by the taker and holder of every Security of such series with every other such taker and holder and the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of such series. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 6.05 Rights and Remedies Cumulative; Delay or Omission Not Waiver.

(a) Except as otherwise provided in Section 2.07, all powers and remedies given by this Article to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such Securities.

(b) No delay or omission of the Trustee or of any holder of any of the Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.04, every power and remedy given by this Article or by law to the Trustee or the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

Section 6.06 Control by Securityholders.

The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding, determined in accordance with Section 8.04, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to such series; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture or subject the Trustee in its sole discretion to personal liability. Subject to the provisions of Section 7.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or officers of the Trustee, determine that the proceeding so directed, subject to the Trustee's duties under the Trust Indenture Act, would involve the Trustee in personal liability or might be unduly prejudicial to the Securityholders not involved in the proceeding. The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding affected thereby, determined in accordance with Section 8.04, may on behalf of the holders of all of the Securities of such series

waive any past default in the performance of any of the covenants contained herein or established pursuant to Section 2.01 with respect to such series and its consequences, except a default in the payment of the principal of, or premium, if any, or interest on, any of the Securities of that series as and when the same shall become due by the terms of such Securities otherwise than by acceleration (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal and any premium has been deposited with the Trustee (in accordance with Section 6.01(c)). Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 6.07 Undertaking to Pay Costs.

All parties to this Indenture agree, and each holder of any Securities by such holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding more than 10% in aggregate principal amount of the Outstanding Securities of any series, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security of such series, on or after the respective due dates expressed in such Security or established pursuant to this Indenture.

ARTICLE 7

CONCERNING THE TRUSTEE

Section 7.01 Certain Duties and Responsibilities of Trustee.

(a) The Trustee, prior to the occurrence of an Event of Default with respect to the Securities of a series and after the curing of all Events of Default with respect to the Securities of that series that may have occurred, shall undertake to perform with respect to the Securities of such series such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants shall be read into this Indenture against the Trustee. In case an Event of Default with respect to the Securities of a series has occurred (that has not been cured or waived), the Trustee shall exercise with respect to Securities of that series such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) prior to the occurrence of an Event of Default with respect to the Securities of a series and after the curing or waiving of all such Events of Default with respect to that series that may have occurred:

(A) the duties and obligations of the Trustee shall with respect to the Securities of such series be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable with respect to the Securities of such series except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(B) in the absence of bad faith on the part of the Trustee, the Trustee may with respect to the Securities of such series conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(ii) the Trustee shall not be liable to any Securityholder or to any other Person for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the Securities of any series at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture with respect to the Securities of that series;

(iv) none of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture or adequate indemnity against such risk is not reasonably assured to it;

(v) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder;

(vi) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee; and

(vii) No Trustee shall have any duty or responsibility for any act or omission of any other Trustee appointed with respect to a series of Securities hereunder.

Section 7.02 Certain Rights of Trustee.

Except as otherwise provided in Section 7.01:

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Board Resolution or an instrument signed in the name of the Company by any authorized officer of the Company (unless other evidence in respect thereof is specifically prescribed herein);

(c) The Trustee may consult with counsel and the opinion or written advice of such counsel or, if requested, any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted hereunder in good faith and in reliance thereon;

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee security or indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities that may be incurred therein or thereby; nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default with respect to a series of the Securities (that has not been cured or waived), to exercise with respect to Securities of that series such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his or her own affairs;

(e) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security, or other papers or documents or inquire as to the performance by the Company of one of its covenants under this Indenture, unless requested in writing so to do by the holders of not less than a majority in principal amount of the Outstanding Securities of the particular series affected thereby (determined as provided in Section 8.04); provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require security or indemnity reasonably acceptable to the Trustee against such costs, expenses or liabilities as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand;

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

(i) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(j) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that (a) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties. The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to furnish the Trustee with Officer's Certificates, Company Orders and any other matters or directions pursuant to this Indenture.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder.

(l) The Trustee shall not be deemed to have knowledge of any Default or Event of Default (other than an Event of Default relating to the failure to pay the interest on, or the principal of, the Securities) until the Trustee shall have received written notification in the manner set forth in this Indenture or a Responsible Officer of the Trustee shall have obtained actual knowledge.

Section 7.03 Trustee Not Responsible for Recitals or Issuance of Securities.

(a) The recitals contained herein and in the Securities shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee shall not be responsible for any statement in any registration statement, prospectus, or any other document in connection with the sale of Securities. The Trustee shall not be responsible for any rating on the Securities or any action or omission of any rating agency.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities.

(c) The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds of such Securities, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture or established pursuant to Section 2.01, or for the use or application of any moneys received by any paying agent other than the Trustee.

Section 7.04 May Hold Securities.

The Trustee or any paying agent or Security Registrar, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, paying agent or Security Registrar.

Section 7.05 Moneys Held in Trust.

Subject to the provisions of Section 11.05, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon.

Section 7.06 Compensation and Reimbursement.

(a) The Company shall pay to the Trustee for each of its capacities hereunder from time to time compensation for its services as the Company and the Trustee shall from time to time agree upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel.

(b) The Company shall indemnify each of the Trustee in each of its capacities hereunder against any loss, liability or expense (including the cost of defending itself and including the reasonable compensation and expenses of the Trustee's agents and counsel) incurred by it except as set forth in Section 7.06(c) in the exercise or performance of its powers, rights or duties under this Indenture as Trustee or Agent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have one separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. This indemnification shall apply to officers, directors, employees, shareholders and agents of the Trustee.

(c) The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee or by any officer, director, employee, shareholder or agent of the Trustee through negligence or bad faith.

(d) To ensure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all funds or property held or collected by the Trustee, except that held in trust to pay principal of or interest on particular Securities. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.01(4) or (5), the expenses (including the reasonable fees and expenses of its counsel) and the compensation for services in connection therewith are to constitute expenses of administration under any bankruptcy law. The provisions of this Section 7.06 shall survive the termination of this Indenture and the resignation or removal of the Trustee.

Section 7.07 Reliance on Officer's Certificate.

Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it reasonably necessary or desirable that a matter be proved or established prior to taking or suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 Disqualification; Conflicting Interests.

If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 7.09 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee with respect to the Securities issued hereunder which shall at all times be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or other Person permitted to act as trustee by the Commission, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state, territorial, or District of Columbia authority.

If such corporation or other Person publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation or other Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

Section 7.10 Resignation and Removal; Appointment of Successor.

(a) The Trustee or any successor hereafter appointed may at any time resign with respect to the Securities of one or more series by giving written notice thereof to the Company and by transmitting notice of resignation by mail, first class postage prepaid, to the Securityholders of such series, as their names and addresses appear upon the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to Securities of such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to Securities of such series, or any Securityholder of that series who has been a bona fide holder of a Security or Securities for at least six months may on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any one of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 7.08 after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any such Securityholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or commence a voluntary bankruptcy proceeding, or a receiver of the Trustee or of its property shall be appointed or consented to, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee with respect to all Securities and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or any Securityholder who has been a bona fide holder of a Security or Securities for at least six months may, on behalf of that holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding may at any time remove the Trustee with respect to such series by so notifying the Trustee and the Company and may appoint a successor Trustee for such series with the consent of the Company.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee with respect to the Securities of a series pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

(e) Any successor trustee appointed pursuant to this Section may be appointed with respect to the Securities of one or more series or all of such series, and at any time there shall be only one Trustee with respect to the Securities of any particular series.

Section 7.11 Acceptance of Appointment By Successor.

(a) In case of the appointment hereunder of a successor trustee with respect to all Securities, every such successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor trustee shall accept such appointment and which (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates, (ii) shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions

of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any act or failure to act on the part of any other Trustee hereunder; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall with respect to the Securities of that or those series to which the appointment of such successor trustee relates have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture, and each such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates; but, on request of the Company or any successor trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor trustee relates.

(c) Upon request of any such successor trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No successor trustee shall accept its appointment unless at the time of such acceptance such successor trustee shall be qualified and eligible under this Article.

(e) Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Securityholders, as their names and addresses appear upon the Security Register. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

Section 7.12 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, including the administration of the trust created by this Indenture, shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 7.13 Preferential Collection of Claims Against the Company.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

Section 7.14 Notice of Default.

If any Event of Default occurs and is continuing and if such Event of Default is known to a Responsible Officer of the Trustee, the Trustee shall mail to each Securityholder in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act notice of the Event of Default within the earlier of 90 days after it occurs and 30 days after it is known to a Responsible Officer of the Trustee or written notice of it is received by the Trustee, unless such Event of Default has been cured; *provided, however*, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security, the Trustee shall be protected in withholding such notice if and so long as the Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Securityholders.

ARTICLE 8

CONCERNING THE SECURITYHOLDERS

Section 8.01 Evidence of Action by Securityholders.

Whenever in this Indenture it is provided that the holders of a majority or specified percentage in aggregate principal amount of the Securities of a particular series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such majority or specified percentage of that series have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by such holders of Securities of that series in person or by agent or proxy appointed in writing.

If the Company shall solicit from the Securityholders of any series any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, as evidenced by an Officer's Certificate, fix in advance a record date for such series for the determination of Securityholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after the record date, but only the Securityholders of record at the close of business on the record date shall be deemed to be Securityholders for the purposes of determining whether Securityholders of the requisite proportion of Outstanding Securities of that series have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Outstanding Securities of that series shall be computed as of the record date; *provided, however*, that no such authorization, agreement or consent by such Securityholders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

Section 8.02 Proof of Execution by Securityholders.

Subject to the provisions of Section 7.01, proof of the execution of any instrument by a Securityholder (such proof will not require notarization) or his or her agent or proxy and proof of the holding by any Person of any of the Securities shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any such Person of any instrument may be proved in any reasonable manner acceptable to the Trustee.

(b) The ownership of Securities shall be proved by the Security Register of such Securities or by a certificate of the Security Registrar thereof.

The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

Section 8.03 Who May be Deemed Owners.

Prior to the due presentment for registration of transfer of any Security, the Company, the Trustee, any paying agent and any Security Registrar may deem and treat the Person in whose name such Security shall be registered upon the books of the Security Registrar as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal of, premium, if any, and (subject to Section 2.03) interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be affected by any notice to the contrary.

Section 8.04 Certain Securities Owned by Company Disregarded.

In determining whether the holders of the requisite aggregate principal amount of Securities of a particular series have concurred in any direction, consent or waiver under this Indenture, the Securities of that series that are owned by the Company or any other obligor on the Securities of that series or by any Person directly or indirectly controlling or controlled by or under common control with the Company or any other obligor on the Securities of that series shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities of such series that the Trustee actually knows are so owned shall be so disregarded. The Securities so owned that have been pledged in good faith may be regarded as Outstanding for the purposes of this Section, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 8.05 Actions Binding on Future Securityholders.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the majority or percentage in aggregate principal amount of the Securities of a particular series specified in this Indenture in connection with such action, any holder of a Security of that series that is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee, and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security, and of any Security issued in exchange therefor, on registration of transfer thereof or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the majority or percentage in aggregate principal amount of the Securities of a particular series specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities of that series.

ARTICLE 9

SUPPLEMENTAL INDENTURES

Section 9.01 Supplemental Indentures Without the Consent of Securityholders.

In addition to any supplemental indenture otherwise authorized by this Indenture, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect), without the consent of the Securityholders, for one or more of the following purposes:

- (a) to cure any ambiguity, defect, or inconsistency herein or in the Securities of any series;
- (b) to comply with Article Ten;
- (c) to provide for uncertificated Securities in addition to or in place of certificated Securities;

(d) to add to the covenants, restrictions, conditions or provisions relating to the Company for the benefit of the holders of all or any series of Securities (and if such covenants, restrictions, conditions or provisions are to be for the benefit of less than all series of Securities, stating that such covenants, restrictions, conditions or provisions are expressly being included solely for the benefit of such series), to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default, or to surrender any right or power herein conferred upon the Company;

(e) to add to, delete from, or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication, and delivery of Securities, as herein set forth;

(f) to make any change that does not adversely affect the rights of any Securityholder in any material respect;

(g) to provide for the issuance of and establish the form and terms and conditions of the Securities of any series as provided in Section 2.01, to establish the form of any certifications required to be furnished pursuant to the terms of this Indenture or any series of Securities, or to add to the rights of the holders of any series of Securities;

(h) to evidence and provide for the acceptance of appointment hereunder by a successor trustee; or

(i) to comply with any requirements of the Commission or any successor in connection with the qualification of this Indenture under the Trust Indenture Act.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section may be executed by the Company and the Trustee without the consent of the holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 9.02.

Section 9.02 Supplemental Indentures With Consent of Securityholders.

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of each series affected by such supplemental indenture or indentures at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner not covered by Section 9.01 the rights of the holders of the Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the holders of each Security then Outstanding and affected thereby, (a) extend the fixed maturity of any Securities of any series, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof or (b) reduce the aforesaid percentage of Securities, the holders of which are required to consent to any such supplemental indenture.

It shall not be necessary for the consent of the Securityholders of any series affected thereby under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 9.03 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture pursuant to the provisions of this Article or of Section 10.01, this Indenture shall, with respect to such series, be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities of the series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04 Securities Affected by Supplemental Indentures.

Securities of any series affected by a supplemental indenture, authenticated and delivered after the execution of such supplemental indenture pursuant to the provisions of this Article or of Section 10.01, may bear a notation in form approved by the Company, provided such form meets the requirements of any securities exchange upon which such series may be listed, as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of that series so modified as to conform, in the opinion of the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Securities of that series then Outstanding.

Section 9.05 Execution of Supplemental Indentures.

Upon the request of the Company, accompanied by its Board Resolutions authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders required to consent thereto as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture. The Trustee, subject to the provisions of Section 7.01, shall receive an Officer's Certificate or an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article is authorized or permitted by the terms of this Article and that all conditions precedent to the execution of the supplemental indenture have been complied with; provided, however, that such Officer's Certificate or Opinion of Counsel need not be provided in connection with the execution of a supplemental indenture that establishes the terms of a series of Securities pursuant to Section 2.01 hereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section, the Company shall (or shall direct the Trustee to) transmit by mail, first class postage prepaid, a notice, setting forth in general terms the substance of such supplemental indenture, to the Securityholders of all series affected thereby as their names and addresses appear upon the Security Register. Any failure of the Company to mail, or cause the mailing of, such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

ARTICLE 10

SUCCESSOR ENTITY

Section 10.01 Company May Consolidate, Etc.

Nothing contained in this Indenture shall prevent any consolidation or merger of the Company with or into any other Person (whether or not affiliated with the Company) or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or other disposition of the property of the Company or its successor or successors as an entirety, or substantially as an entirety, to any other Person (whether or not affiliated with the Company or its successor or successors); provided, however, the Company hereby covenants and agrees that, upon any such consolidation or merger (in each case, if the Company is not the survivor of such transaction) or any such sale, conveyance, transfer or other disposition (other than a sale, conveyance, transfer or other disposition to a Subsidiary of the Company), the due and punctual payment of the principal of (premium, if any) and interest on all of the Securities of all series in accordance with the terms of each series, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this Indenture with respect to each series or established with respect to such series pursuant to Section 2.01 to be kept or performed by the Company shall be expressly assumed, by supplemental indenture (which shall conform to the provisions of the Trust Indenture Act, as then in effect) reasonably satisfactory in form to the Trustee executed and delivered to the Trustee by the entity formed by such consolidation, or into which the Company shall have been merged, or by the entity which shall have acquired such property.

Section 10.02 Successor Entity Substituted.

(a) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition and upon the assumption by the successor entity by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the obligations set forth under Section 10.01 on all of the Securities of all series Outstanding, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named as the Company herein, and thereupon the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

(b) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

(c) Nothing contained in this Article shall require any action by the Company in the case of a consolidation or merger of any Person into the Company where the Company is the survivor of such transaction, or the acquisition by the Company, by purchase or otherwise, of all or any part of the property of any other Person (whether or not affiliated with the Company).

ARTICLE 11

SATISFACTION AND DISCHARGE

Section 11.01 Satisfaction and Discharge of Indenture.

If at any time: (a) the Company shall have delivered to the Trustee for cancellation all Securities of a series theretofore authenticated and not delivered to the Trustee for cancellation (other than any Securities that shall have been destroyed, lost or stolen and that shall have been replaced or paid as provided in Section 2.07 and Securities for whose payment money or Governmental Obligations have theretofore been deposited in trust or segregated and held in trust by the Company and thereupon repaid to the Company or discharged from such trust, as provided in Section 11.05); or (b) all such Securities of a particular series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit or cause to be deposited with the Trustee as trust funds the entire amount in moneys or Governmental Obligations or a combination thereof, sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay at maturity or upon redemption all Securities of that series not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder with respect to such series by the Company then this Indenture shall thereupon cease to be of further effect with respect to such series except for the provisions of Sections 2.03, 2.05, 2.07, 4.01, 4.02, 4.03 and 7.10, that shall survive until the date of maturity or redemption date, as the case may be, and Sections 7.06 and 11.05, that shall survive to such date and thereafter, and the Trustee, on demand of the Company and at the cost and expense of the Company shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to such series.

Section 11.02 Discharge of Obligations.

If at any time all such Securities of a particular series not heretofore delivered to the Trustee for cancellation or that have not become due and payable as described in Section 11.01 shall have been paid by the Company by depositing irrevocably with the Trustee as trust funds moneys or an amount of Governmental Obligations sufficient to pay at maturity or upon redemption all such Securities of that series not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to such series, then after the date such moneys or Governmental Obligations, as the case may be, are deposited with the Trustee the obligations of the Company under this Indenture with respect to such series shall cease to be of further effect except for the provisions of Sections 2.03, 2.05, 2.07, 4.01, 4.02, 4.03, 7.06, 7.10 and 11.05 hereof that shall survive until such Securities shall mature and be paid.

Thereafter, Sections 7.06 and 11.05 shall survive.

Section 11.03 Deposited Moneys to be Held in Trust.

All moneys or Governmental Obligations deposited with the Trustee pursuant to Sections 11.01 or 11.02 shall be held in trust and shall be available for payment as due, either directly or through any paying agent (including the Company acting as its own paying agent), to the holders of the particular series of Securities for the payment or redemption of which such moneys or Governmental Obligations have been deposited with the Trustee.

Section 11.04 Payment of Moneys Held by Paying Agents.

In connection with the satisfaction and discharge of this Indenture all moneys or Governmental Obligations then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys or Governmental Obligations.

Section 11.05 Repayment to Company.

Any moneys or Governmental Obligations deposited with any paying agent or the Trustee, or then held by the Company, in trust for payment of principal of or premium, if any, or interest on the Securities of a particular series that are not applied but remain unclaimed by the holders of such Securities for at least two years after the date upon which the principal of (and premium, if any) or interest on such Securities shall have respectively become due and payable, or such other shorter period set forth in applicable escheat or abandoned or unclaimed property law, shall be repaid to the Company on May 31 of each year or upon the Company's request or (if then held by the Company) shall be discharged from such trust; and thereupon the paying agent and the Trustee shall be released from all further liability with respect to such moneys or Governmental Obligations, and the holder of any of the Securities entitled to receive such payment shall thereafter, as a general creditor, look only to the Company for the payment thereof.

ARTICLE 12

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 No Recourse.

No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred

by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Securities.

ARTICLE 13

MISCELLANEOUS PROVISIONS

Section 13.01 Effect on Successors and Assigns.

All the covenants, stipulations, promises and agreements in this Indenture made by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

Section 13.02 Actions by Successor.

Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the corresponding board, committee or officer of any corporation that shall at the time be the lawful successor of the Company.

Section 13.03 Surrender of Company Powers.

The Company by instrument in writing executed by authority of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company, and thereupon such power so surrendered shall terminate both as to the Company and as to any successor corporation.

Section 13.04 Notices.

Except as otherwise expressly provided herein, any notice, request or demand that by any provision of this Indenture is required or permitted to be given, made or served by the Trustee, the Security Registrar, any paying or other agent under this Indenture or by the holders of Securities or by any other Person pursuant to this Indenture to or on the Company may be given or served by being deposited in first class mail, postage prepaid, addressed (until another address is filed in writing by the Company with the Trustee), as follows: _____ . Any notice, election, request or demand by the Company or any Securityholder or by any other Person pursuant to this Indenture to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee.

Section 13.05 Governing Law; Jury Trial Waiver.

This Indenture and each Security shall governed by, and construed in accordance with, the internal laws of the State of New York, except to the extent that the Trust Indenture Act is applicable.

EACH PARTY HERETO, AND EACH HOLDER OF A SECURITY BY ACCEPTANCE THEREOF, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE.

Section 13.06 Treatment of Securities as Debt.

It is intended that the Securities will be treated as indebtedness and not as equity for federal income tax purposes. The provisions of this Indenture shall be interpreted to further this intention.

Section 13.07 Certificates and Opinions as to Conditions Precedent.

(a) Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent provided for in this Indenture (other than the certificate to be delivered pursuant to Section 13.12) relating to the proposed action have been complied with and, if requested, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant in this Indenture (other than the certificate to be delivered pursuant to Section 13.12 or Section 314(a)(1) of the Trust Indenture Act) shall include (i) a statement that the Person making such certificate or opinion has read such covenant or condition; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the opinion of such Person, he has made such examination or investigation as is reasonably necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 13.08 Payments on Business Days.

Except as provided pursuant to Section 2.01 pursuant to a Board Resolution, and set forth in an Officer's Certificate, or established in one or more indentures supplemental to this Indenture, in any case where the date of maturity of interest or principal of any Security or the date of redemption of any Security shall not be a Business Day, then payment of interest or principal (and premium, if any) may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of maturity or redemption, and no interest shall accrue for the period after such nominal date.

Section 13.09 Conflict with Trust Indenture Act.

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Section 318(c) of the Trust Indenture Act, such imposed duties shall control.

Section 13.10 Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 13.11 Separability.

In case any one or more of the provisions contained in this Indenture or in the Securities of any series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Securities, but this Indenture and such Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 13.12 Compliance Certificates.

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year during which any Securities of any series were outstanding, an officer's certificate stating whether or not the signers know of any Event of Default that occurred during such fiscal year. Such certificate shall contain a certification from the principal executive officer, principal financial officer or principal accounting officer of the Company that a review has been conducted of the activities of the Company and the Company's performance under this Indenture and that the Company has complied with all conditions and covenants under this Indenture. For purposes of this Section 13.12, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture. If the officer of the Company signing such certificate has knowledge of such an Event of Default, the certificate shall describe any such Event of Default and its status.

Section 13.13 U.S.A Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 13.14 Force Majeure.

In no event shall the Trustee, the Security Registrar, any paying agent or any other agent under this Indenture be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions or utilities, communications or computer (software and hardware) services; it being understood that the Trustee, the Security Registrar, any paying agent or any other agent under this Indenture shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 13.15 Table of Contents; Headings.

The table of contents and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof, and will not modify or restrict any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

EIGER BIOPHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

[TRUSTEE], as Trustee

By: _____

Name: _____

Title: _____

CROSS-REFERENCE TABLE (1)

<u>Section of Trust Indenture Act of 1939, as Amended</u>	<u>Section of Indenture</u>
310(a)	7.09
310(b)	7.08
	7.10
310(c)	Inapplicable
311(a)	7.13
311(b)	7.13
311(c)	Inapplicable
312(a)	5.01
	5.02(a)
312(b)	5.02(c)
312(c)	5.02(c)
313(a)	5.04(a)
313(b)	5.04(b)
313(c)	5.04(a)
	5.04(b)
313(d)	5.04(c)
314(a)	5.03
	13.12
314(b)	Inapplicable
314(c)	13.07(a)
314(d)	Inapplicable
314(e)	13.07(b)
314(f)	Inapplicable
315(a)	7.01(a)
	7.01(b)
315(b)	7.14
315(c)	7.01
315(d)	7.01(b)
315(e)	6.07
316(a)	6.06
	8.04
316(b)	6.04
316(c)	8.01
317(a)	6.02
317(b)	4.03
318(a)	13.09

(1) This Cross-Reference Table does not constitute part of the Indenture and shall not have any bearing on the interpretation of any of its terms or provisions.

EIGER BIOPHARMACEUTICALS, INC.

AND

_____, AS WARRANT AGENT

FORM OF COMMON STOCK
WARRANT AGREEMENT

DATED AS OF [____], 20____

EIGER BIOPHARMACEUTICALS, INC.
FORM OF COMMON STOCK WARRANT AGREEMENT

COMMON STOCK WARRANT AGREEMENT (this "**Agreement**"), dated as of _____ between **EIGER BIOPHARMACEUTICALS, INC.**, a Delaware corporation (the "**Company**"), and _____, a [corporation] [national banking association] organized and existing under the laws of _____ and having a corporate trust office in _____, as warrant agent (the "**Warrant Agent**").

WHEREAS, the Company proposes to sell [if Warrants are sold with other securities—[title of such other securities being offered] (the "**Other Securities**") with] warrant certificates evidencing one or more warrants (the "**Warrants**" or, individually, a "**Warrant**") representing the right to purchase Common Stock of the Company, par value \$0.00001 per share (the "**Warrant Securities**"), such warrant certificates and other warrant certificates issued pursuant to this Agreement being herein called the "**Warrant Certificates**"; and

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing so to act, in connection with the issuance, registration, transfer, exchange, exercise and replacement of the Warrant Certificates, and in this Agreement wishes to set forth, among other things, the form and provisions of the Warrant Certificates and the terms and conditions on which they may be issued, registered, transferred, exchanged, exercised and replaced.

NOW THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE 1

ISSUANCE OF WARRANTS AND EXECUTION AND DELIVERY OF WARRANT CERTIFICATES

1.1 Issuance Of Warrants. [If Warrants alone—Upon issuance, each Warrant Certificate shall evidence one or more Warrants.] [If Other Securities and Warrants—Warrant Certificates shall be [initially] issued in connection with the issuance of the Other Securities [but shall be separately transferable on and after _____ (the "**Detachable Date**") [and shall not be separately transferable] and each Warrant Certificate shall evidence one or more Warrants.] Each Warrant evidenced thereby shall represent the right, subject to the provisions contained herein and therein, to purchase one Warrant Security. [If Other Securities and Warrants—Warrant Certificates shall be initially issued in units with the Other Securities and each Warrant Certificate included in such a unit shall evidence _____ Warrants for each [\$_____ principal amount] [_____ shares] of Other Securities included in such unit.]

1.2 Execution And Delivery Of Warrant Certificates. Each Warrant Certificate, whenever issued, shall be in registered form substantially in the form set forth in **Exhibit A** hereto, shall be dated the date of its countersignature by the Warrant Agent and may have such letters, numbers, or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the officers of the Company

executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange on which the Warrants may be listed, or to conform to usage. The Warrant Certificates shall be signed on behalf of the Company by any of its present or future chief executive officers, presidents, senior vice presidents, vice presidents, chief financial officers, chief legal officers, treasurers, assistant treasurers, controllers, assistant controllers, secretaries or assistant secretaries under its corporate seal reproduced thereon. Such signatures may be manual or facsimile signatures of such authorized officers and may be imprinted or otherwise reproduced on the Warrant Certificates. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Warrant Certificates.

No Warrant Certificate shall be valid for any purpose, and no Warrant evidenced thereby shall be exercisable, until such Warrant Certificate has been countersigned by the manual signature of the Warrant Agent. Such signature by the Warrant Agent upon any Warrant Certificate executed by the Company shall be conclusive evidence that the Warrant Certificate so countersigned has been duly issued hereunder.

In case any officer of the Company who shall have signed any of the Warrant Certificates either manually or by facsimile signature shall cease to be such officer before the Warrant Certificates so signed shall have been countersigned and delivered by the Warrant Agent, such Warrant Certificates may be countersigned and delivered notwithstanding that the person who signed Warrant Certificates ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Warrant Certificate, shall be the proper officers of the Company, although at the date of the execution of this Agreement any such person was not such officer.

The term "holder" or "holder of a Warrant Certificate" as used herein shall mean any person in whose name at the time any Warrant Certificate shall be registered upon the books to be maintained by the Warrant Agent for that purpose [If Other Securities and Warrants are not immediately detachable—or upon the registration of the Other Securities prior to the Detachable Date. Prior to the Detachable Date, the Company will, or will cause the registrar of the Other Securities to, make available at all times to the Warrant Agent such information as to holders of the Other Securities as may be necessary to keep the Warrant Agent's records up to date].

1.3 Issuance Of Warrant Certificates. Warrant Certificates evidencing the right to purchase Warrant Securities may be executed by the Company and delivered to the Warrant Agent upon the execution of this Warrant Agreement or from time to time thereafter. The Warrant Agent shall, upon receipt of Warrant Certificates duly executed on behalf of the Company, countersign such Warrant Certificates and shall deliver such Warrant Certificates to or upon the order of the Company.

ARTICLE 2

WARRANT PRICE, DURATION AND EXERCISE OF WARRANTS

2.1 Warrant Price. During the period specified in Section 2.2, each Warrant shall, subject to the terms of this Warrant Agreement and the applicable Warrant Certificate, entitle the holder thereof to purchase the number of Warrant Securities specified in the applicable Warrant Certificate at an exercise price of \$_____ per Warrant Security, subject to adjustment upon the occurrence of certain events, as hereinafter provided. Such purchase price per Warrant Security is referred to in this Agreement as the "**Warrant Price.**"

2.2 Duration Of Warrants. Each Warrant may be exercised in whole or in part at any time, as specified herein, on or after [the date thereof] [_____] and at or before [_____] p.m., [_____] time, on [_____] or such later date as the Company may designate by notice to the Warrant Agent and the holders of Warrant Certificates mailed to their addresses as set forth in the record books of the Warrant Agent (the "**Expiration Date**"). Each Warrant not exercised at or before [_____] p.m., [_____] time, on the Expiration Date shall become void, and all rights of the holder of the Warrant Certificate evidencing such Warrant under this Agreement shall cease.

2.3 Exercise Of Warrants.

(a) During the period specified in Section 2.2, the Warrants may be exercised to purchase a whole number of Warrant Securities in registered form by providing certain information as set forth on the reverse side of the Warrant Certificate and by paying in full, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds] the Warrant Price for each Warrant Security with respect to which a Warrant is being exercised to the Warrant Agent at its corporate trust office, provided that such exercise is subject to receipt within five business days of such payment by the Warrant Agent of the Warrant Certificate with the form of election to purchase Warrant Securities set forth on the reverse side of the Warrant Certificate properly completed and duly executed. The date on which payment in full of the Warrant Price is received by the Warrant Agent shall, subject to receipt of the Warrant Certificate as aforesaid, be deemed to be the date on which the Warrant is exercised; provided, however, that if, at the date of receipt of such Warrant Certificates and payment in full of the Warrant Price, the transfer books for the Warrant Securities purchasable upon the exercise of such Warrants shall be closed, no such receipt of such Warrant Certificates and no such payment of such Warrant Price shall be effective to constitute the person so designated to be named as the holder of record of such Warrant Securities on such date, but shall be effective to constitute such person as the holder of record of such Warrant Securities for all purposes at the opening of business on the next succeeding day on which the transfer books for the Warrant Securities purchasable upon the exercise of such Warrants shall be opened, and the certificates for the Warrant Securities in respect of which such Warrants are then exercised shall be issuable as of the date on such next succeeding day on which the transfer books shall next be opened, and until such date the Company shall be under no duty to deliver any certificate for such Warrant

Securities. The Warrant Agent shall deposit all funds received by it in payment of the Warrant Price in an account of the Company maintained with it and shall advise the Company by telephone at the end of each day on which a payment for the exercise of Warrants is received of the amount so deposited to its account. The Warrant Agent shall promptly confirm such telephone advice to the Company in writing.

(b) The Warrant Agent shall, from time to time, as promptly as practicable, advise the Company of (i) the number of Warrant Securities with respect to which Warrants were exercised, (ii) the instructions of each holder of the Warrant Certificates evidencing such Warrants with respect to delivery of the Warrant Securities to which such holder is entitled upon such exercise, (iii) delivery of Warrant Certificates evidencing the balance, if any, of the Warrants for the remaining Warrant Securities after such exercise, and (iv) such other information as the Company shall reasonably require.

(c) As soon as practicable after the exercise of any Warrant, the Company shall issue to or upon the order of the holder of the Warrant Certificate evidencing such Warrant the Warrant Securities to which such holder is entitled, in fully registered form, registered in such name or names as may be directed by such holder. If fewer than all of the Warrants evidenced by such Warrant Certificate are exercised, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, a new Warrant Certificate evidencing Warrants for the number of Warrant Securities remaining unexercised.

(d) The Company shall not be required to pay any stamp or other tax or other governmental charge required to be paid in connection with any transfer involved in the issue of the Warrant Securities, and in the event that any such transfer is involved, the Company shall not be required to issue or deliver any Warrant Security until such tax or other charge shall have been paid or it has been established to the Company's satisfaction that no such tax or other charge is due.

(e) Prior to the issuance of any Warrants there shall have been reserved, and the Company shall at all times through the Expiration Date keep reserved, out of its authorized but unissued Warrant Securities, a number of shares sufficient to provide for the exercise of the Warrants.

ARTICLE 3

OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS OF WARRANT CERTIFICATES

3.1 No Rights As Warrant Securityholder Conferred By Warrants Or Warrant Certificates. No Warrant Certificate or Warrant evidenced thereby shall entitle the holder thereof to any of the rights of a holder of Warrant Securities, including, without limitation, the right to receive the payment of dividends or distributions, if any, on the Warrant Securities or to exercise any voting rights, except to the extent expressly set forth in this Agreement or the applicable Warrant Certificate.

3.2 Lost, Stolen, Mutilated Or Destroyed Warrant Certificates. Upon receipt by the Warrant Agent of evidence reasonably satisfactory to it and the Company of the ownership of and the loss, theft, destruction or mutilation of any Warrant Certificate and/or indemnity reasonably satisfactory to the Warrant Agent and the Company and, in the case of mutilation, upon surrender of the mutilated Warrant Certificate to the Warrant Agent for cancellation, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, in exchange for or in lieu of the lost, stolen, destroyed or mutilated Warrant Certificate, a new Warrant Certificate of the same tenor and evidencing Warrants for a like number of Warrant Securities. Upon the issuance of any new Warrant Certificate under this Section 3.2, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Warrant Agent) in connection therewith. Every substitute Warrant Certificate executed and delivered pursuant to this Section 3.2 in lieu of any lost, stolen or destroyed Warrant Certificate shall represent an additional contractual obligation of the Company, whether or not the lost, stolen or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Section 3.2 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement of mutilated, lost, stolen or destroyed Warrant Certificates.

3.3 Holder Of Warrant Certificate May Enforce Rights. Notwithstanding any of the provisions of this Agreement, any holder of a Warrant Certificate, without the consent of the Warrant Agent, the holder of any Warrant Securities or the holder of any other Warrant Certificate, may, in such holder's own behalf and for such holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such holder's right to exercise the Warrants evidenced by such holder's Warrant Certificate in the manner provided in such holder's Warrant Certificate and in this Agreement.

3.4 Adjustments.

(a) In case the Company shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, the Warrant Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of Warrant Securities purchasable under the Warrants shall be proportionately increased. Conversely, in case the outstanding shares of Common Stock of the Company shall be combined into a smaller number of shares, the Warrant Price in effect immediately prior to such combination shall be proportionately increased and the number of Warrant Securities purchasable under the Warrants shall be proportionately decreased.

(b) If at any time or from time to time the holders of Common Stock (or any shares of stock or other securities at the time receivable upon the exercise of the Warrants) shall have received or become entitled to receive, without payment therefore,

(i) Common Stock or any shares of stock or other securities which are at any time directly or indirectly convertible into or exchangeable for Common Stock, or any rights or options to subscribe for, purchase or otherwise acquire any of the foregoing by way of dividend or other distribution;

(ii) any cash paid or payable otherwise than as a cash dividend paid or payable out of the Company's current or retained earnings;

(iii) any evidence of the Company's indebtedness or rights to subscribe for or purchase the Company's indebtedness; or

(iv) Common Stock or additional stock or other securities or property (including cash) by way of spinoff, split-up, reclassification, combination of shares or similar corporate rearrangement (other than shares of Common Stock issued as a stock split or adjustments in respect of which shall be covered by the terms of Section 3.4(a) above), then and in each such case, the holder of each Warrant shall, upon the exercise of the Warrant, be entitled to receive, in addition to the number of Warrant Securities receivable thereupon, and without payment of any additional consideration therefore, the amount of stock and other securities and property (including cash and indebtedness or rights to subscribe for or purchase indebtedness) which such holder would hold on the date of such exercise had he been the holder of record of such Warrant Securities as of the date on which holders of Common Stock received or became entitled to receive such shares or all other additional stock and other securities and property.

(c) In case of (i) any reclassification, capital reorganization, or change in the Common Stock of the Company (other than as a result of a subdivision, combination, or stock dividend provided for in Section 3.4(a) or Section 3.4(b) above), (ii) share exchange, merger or similar transaction of the Company with or into another person or entity (other than a share exchange, merger or similar transaction in which the Company is the acquiring or surviving corporation and which does not result in any change in the Common Stock other than the issuance of additional shares of Common Stock) or (iii) the sale, exchange, lease, transfer or other disposition of all or substantially all of the properties and assets of the Company as an entirety (in any such case, a "**Reorganization Event**"), then, as a condition of such Reorganization Event, lawful provisions shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the holders of the Warrants, so that the holders of the Warrants shall have the right at any time prior to the expiration of the Warrants to purchase, at a total price equal to that payable upon the exercise of the Warrants, the kind and amount of shares of stock and other securities and property receivable in connection with such Reorganization Event by a holder of the same number of Warrant Securities as were purchasable by the holders of the Warrants immediately prior to such Reorganization Event. In any such case appropriate provisions shall be made with respect to the rights and interests of the holders of the Warrants so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon exercise the Warrants, and appropriate adjustments shall be made to the Warrant Price payable hereunder provided the aggregate purchase price shall remain the same. In the case of any transaction described in clauses (ii) and (iii) above, the Company shall thereupon be relieved of any further obligation hereunder or under the Warrants, and the Company as the predecessor corporation may thereupon or at any time thereafter be dissolved, wound up or liquidated. Such successor or

assuming entity thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Warrants issuable hereunder which heretofore shall not have been signed by the Company, and may execute and deliver securities in its own name, in fulfillment of its obligations to deliver Warrant Securities upon exercise of the Warrants. All the Warrants so issued shall in all respects have the same legal rank and benefit under this Agreement as the Warrants theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Warrants had been issued at the date of the execution hereof. In any case of any such Reorganization Event, such changes in phraseology and form (but not in substance) may be made in the Warrants thereafter to be issued as may be appropriate. The Warrant Agent may receive a written opinion of legal counsel as conclusive evidence that any such Reorganization Event complies with the provisions of this Section 3.4.

(d) The Company may, at its option, at any time until the Expiration Date, reduce the then current Warrant Price to any amount deemed appropriate by the Board of Directors of the Company for any period not exceeding twenty consecutive days (as evidenced in a resolution adopted by such Board of Directors), but only upon giving the notices required by Section 3.5 at least ten days prior to taking such action.

(e) Except as herein otherwise expressly provided, no adjustment in the Warrant Price shall be made by reason of the issuance of shares of Common Stock, or securities convertible into or exchangeable for shares of Common Stock, or securities carrying the right to purchase any of the foregoing or for any other reason whatsoever.

(f) No fractional Warrant Securities shall be issued upon the exercise of Warrants. If more than one Warrant shall be exercised at one time by the same holder, the number of full Warrant Securities which shall be issuable upon such exercise shall be computed on the basis of the aggregate number of Warrant Securities purchased pursuant to the Warrants so exercised. Instead of any fractional Warrant Security which would otherwise be issuable upon exercise of any Warrant, the Company shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the last sales price (or bid price if there were no sales) per Warrant Security, in either case as reported on the principal registered national securities exchange on which the Warrant Securities are listed or admitted to trading on the business day that next precedes the day of exercise or, if the Warrant Securities are not then listed or admitted to trading on any registered national securities exchange, the average of the closing high bid and low asked prices as reported on the OTC Bulletin Board Service (the "**OTC Bulletin Board**") operated by the Financial Industry Regulatory Authority, Inc. ("**FINRA**") or, if not available on the OTC Bulletin Board, then the average of the closing high bid and low asked prices as reported on any other U.S. quotation medium or inter-dealer quotation system on such date, or if on any such date the Warrant Securities are not listed or admitted to trading on a registered national securities exchange, are not included in the OTC Bulletin Board, and are not quoted on any other U.S. quotation medium or inter-dealer quotation system, an amount equal to the same fraction of the average of the closing bid and asked prices as furnished by any FINRA member firm selected from time to time by the Company for that purpose at the close of business on the business day that next precedes the day of exercise.

(g) Whenever the Warrant Price then in effect is adjusted as herein provided, the Company shall mail to each holder of the Warrants at such holder's address as it shall appear on the books of the Company a statement setting forth the adjusted Warrant Price then and thereafter effective under the provisions hereof, together with the facts, in reasonable detail, upon which such adjustment is based.

(h) Notwithstanding anything to the contrary herein, in no event shall the Warrant Price, as adjusted in accordance with the terms hereof, be less than the par value per share of Common Stock.

3.5 Notice To Warrantholders. In case the Company shall (a) effect any dividend or distribution described in Section 3.4(b), (b) effect any Reorganization Event, (c) make any distribution on or in respect of the Common Stock in connection with the dissolution, liquidation or winding up of the Company, or (d) reduce the then current Warrant Price pursuant to Section 3.4(d), then the Company shall mail to each holder of Warrants at such holder's address as it shall appear on the books of the Warrant Agent, at least ten days prior to the applicable date hereinafter specified, a notice stating (x) the record date for such dividend or distribution, or, if a record is not to be taken, the date as of which the holders of record of Common Stock that will be entitled to such dividend or distribution are to be determined, (y) the date on which such Reorganization Event, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such Reorganization Event, dissolution, liquidation or winding up, or (z) the first date on which the then current Warrant Price shall be reduced pursuant to Section 3.4(d). No failure to mail such notice nor any defect therein or in the mailing thereof shall affect any such transaction or any adjustment in the Warrant Price required by Section 3.4.

3.6 [If The Warrants Are Subject To Acceleration By The Company, Insert—Acceleration Of Warrants By The Company.

(a) At any time on or after _____, the Company shall have the right to accelerate any or all Warrants at any time by causing them to expire at the close of business on the day next preceding a specified date (the "**Acceleration Date**"), if the Market Price (as hereinafter defined) of the Common Stock equals or exceeds _____ percent (____%) of the then effective Warrant Price on any twenty Trading Days (as hereinafter defined) within a period of thirty consecutive Trading Days ending no more than five Trading Days prior to the date on which the Company gives notice to the Warrant Agent of its election to accelerate the Warrants.

(b) "**Market Price**" for each Trading Day shall be, if the Common Stock is listed or admitted to trading on any registered national securities exchange, the last reported sale price, regular way (or, if no such price is reported, the average of the reported closing bid and asked prices, regular way) of Common Stock, in either case as reported on the principal registered national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or admitted to trading on any registered national securities exchange, the average of the closing high bid and low asked prices as reported on the OTC Bulletin Board operated by FINRA, or if not available on the OTC Bulletin Board, then the average of the closing high bid and low asked prices as reported on any other U.S. quotation medium or inter-dealer quotation system, or if on any such date the shares of Common Stock are not listed or admitted to trading on a registered national securities exchange, are not included in the OTC

Bulletin Board, and are not quoted on any other U.S. quotation medium or inter-dealer quotation system, the average of the closing bid and asked prices as furnished by any FINRA member firm selected from time to time by the Company for that purpose. “**Trading Day**” shall be each Monday through Friday, other than any day on which securities are not traded in the system or on the exchange that is the principal market for the Common Stock, as determined by the Board of Directors of the Company.

(c) In the event of an acceleration of less than all of the Warrants, the Warrant Agent shall select the Warrants to be accelerated by lot, pro rata or in such other manner as it deems, in its discretion, to be fair and appropriate.

(d) Notice of an acceleration specifying the Acceleration Date shall be sent by mail first class, postage prepaid, to each registered holder of a Warrant Certificate representing a Warrant accelerated at such holder’s address appearing on the books of the Warrant Agent not more than sixty days nor less than thirty days before the Acceleration Date. Such notice of an acceleration also shall be given no more than twenty days, and no less than ten days, prior to the mailing of notice to registered holders of Warrants pursuant to this Section 3.6, by publication at least once in a newspaper of general circulation in the City of New York.

(e) Any Warrant accelerated may be exercised until [_____] p.m., [_____] time, on the business day next preceding the Acceleration Date. The Warrant Price shall be payable as provided in Section 2.]

ARTICLE 4

EXCHANGE AND TRANSFER OF WARRANT CERTIFICATES

4.1 Exchange And Transfer Of Warrant Certificates. [If Other Securities with Warrants which are immediately detachable—Upon] [If Other Securities with Warrants which are not immediately detachable—Prior to the Detachable Date, a Warrant Certificate may be exchanged or transferred only together with the Other Security to which the Warrant Certificate was initially attached, and only for the purpose of effecting or in conjunction with an exchange or transfer of such Other Security. Prior to any Detachable Date, each transfer of the Other Security shall operate also to transfer the related Warrant Certificates. After the Detachable Date, upon] surrender at the corporate trust office of the Warrant Agent, Warrant Certificates evidencing Warrants may be exchanged for Warrant Certificates in other denominations evidencing such Warrants or the transfer thereof may be registered in whole or in part; provided that such other Warrant Certificates evidence Warrants for the same aggregate number of Warrant Securities as the Warrant Certificates so surrendered. The Warrant Agent shall keep, at its corporate trust office, books in which, subject to such reasonable regulations as it may prescribe, it shall register Warrant Certificates and exchanges and transfers of outstanding Warrant Certificates, upon surrender of the Warrant Certificates to the Warrant Agent at its corporate trust office for exchange or registration of transfer, properly endorsed or accompanied by appropriate instruments of registration of transfer and written instructions for transfer, all in form satisfactory to the Company and the Warrant Agent. No service charge shall be made for any exchange or registration of transfer of Warrant Certificates, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that

may be imposed in connection with any such exchange or registration of transfer. Whenever any Warrant Certificates are so surrendered for exchange or registration of transfer, an authorized officer of the Warrant Agent shall manually countersign and deliver to the person or persons entitled thereto a Warrant Certificate or Warrant Certificates duly authorized and executed by the Company, as so requested. The Warrant Agent shall not be required to effect any exchange or registration of transfer which will result in the issuance of a Warrant Certificate evidencing a Warrant for a fraction of a Warrant Security or a number of Warrants for a whole number of Warrant Securities and a fraction of a Warrant Security. All Warrant Certificates issued upon any exchange or registration of transfer of Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations and entitled to the same benefits under this Agreement as the Warrant Certificate surrendered for such exchange or registration of transfer.

4.2 Treatment Of Holders Of Warrant Certificates. [If Other Securities and Warrants are not immediately detachable—Prior to the Detachable Date, the Company, the Warrant Agent and all other persons may treat the owner of the Other Security as the owner of the Warrant Certificates initially attached thereto for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced by such Warrant Certificates, any notice to the contrary notwithstanding. After the Detachable Date and prior to due presentment of a Warrant Certificate for registration of transfer, the] [The] Company, the Warrant Agent and all other persons may treat the registered holder of a Warrant Certificate as the absolute owner thereof for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced thereby, any notice to the contrary notwithstanding.

4.3 Cancellation Of Warrant Certificates. Any Warrant Certificate surrendered for exchange, registration of transfer or exercise of the Warrants evidenced thereby shall, if surrendered to the Company, be delivered to the Warrant Agent and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly canceled by the Warrant Agent and shall not be reissued and, except as expressly permitted by this Agreement, no Warrant Certificate shall be issued hereunder in exchange therefor or in lieu thereof.

The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of canceled Warrant Certificates in a manner satisfactory to the Company.

ARTICLE 5

CONCERNING THE WARRANT AGENT

5.1 Warrant Agent. The Company hereby appoints _____ as Warrant Agent of the Company in respect of the Warrants and the Warrant Certificates upon the terms and subject to the conditions herein set forth, and _____ hereby accepts such appointment. The Warrant Agent shall have the powers and authority granted to and conferred upon it in the Warrant Certificates and hereby and such further powers and authority to act on behalf of the Company as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Warrant Certificates are subject to and governed by the terms and provisions hereof.

5.2 Conditions Of Warrant Agent's Obligations. The Warrant Agent accepts its obligations herein set forth upon the terms and conditions hereof, including the following to all of which the Company agrees and to all of which the rights hereunder of the holders from time to time of the Warrant Certificates shall be subject:

(a) Compensation And Indemnification. The Company agrees promptly to pay the Warrant Agent the compensation to be agreed upon with the Company for all services rendered by the Warrant Agent and to reimburse the Warrant Agent for reasonable out-of-pocket expenses (including reasonable counsel fees) incurred without negligence, bad faith or willful misconduct by the Warrant Agent in connection with the services rendered hereunder by the Warrant Agent. The Company also agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence, bad faith or willful misconduct on the part of the Warrant Agent, arising out of or in connection with its acting as Warrant Agent hereunder, including the reasonable costs and expenses of defending against any claim of such liability.

(b) Agent For The Company. In acting under this Warrant Agreement and in connection with the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligations or relationship of agency or trust for or with any of the holders of Warrant Certificates or beneficial owners of Warrants.

(c) Counsel. The Warrant Agent may consult with counsel satisfactory to it, which may include counsel for the Company, and the written advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the advice of such counsel.

(d) Documents. The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or omitted by it in reliance upon any Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties.

(e) Certain Transactions. The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire any interest in, Warrants, with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as depository, trustee or agent for, any committee or body of holders of Warrant Securities or other obligations of the Company as freely as if it were not the Warrant Agent hereunder. Nothing in this Warrant Agreement shall be deemed to prevent the Warrant Agent from acting as trustee under any indenture to which the Company is a party.

(f) No Liability For Interest. Unless otherwise agreed with the Company, the Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(g) No Liability For Invalidity. The Warrant Agent shall have no liability with respect to any invalidity of this Agreement or any of the Warrant Certificates (except as to the Warrant Agent's countersignature thereon).

(h) No Responsibility For Representations. The Warrant Agent shall not be responsible for any of the recitals or representations herein or in the Warrant Certificates (except as to the Warrant Agent's countersignature thereon), all of which are made solely by the Company.

(i) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are herein and in the Warrant Certificates specifically set forth and no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a holder of a Warrant Certificate with respect to such default, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or, except as provided in Section 6.2 hereof, to make any demand upon the Company.

5.3 Resignation, Removal And Appointment Of Successors.

(a) The Company agrees, for the benefit of the holders from time to time of the Warrant Certificates, that there shall at all times be a Warrant Agent hereunder until all the Warrants have been exercised or are no longer exercisable.

(b) The Warrant Agent may at any time resign as agent by giving written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective; provided that such date shall not be less than three months after the date on which such notice is given unless the Company otherwise agrees. The Warrant Agent hereunder may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the intended date when it shall become effective. Such resignation or removal shall take effect upon the appointment by the Company, as hereinafter provided, of a successor Warrant Agent (which shall be a bank or trust company authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers) and the acceptance of such appointment by such successor Warrant Agent. The obligation of the Company under Section 5.2(a) shall continue to the extent set forth therein notwithstanding the resignation or removal of the Warrant Agent.

(c) In case at any time the Warrant Agent shall resign, or shall be removed, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or shall commence a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or under any other applicable Federal or state bankruptcy, insolvency or similar law or shall consent to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator (or other similar official) of the Warrant Agent or its property or affairs, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of any such action, or a decree or order for relief by a court having jurisdiction in the premises shall have been entered in respect of the Warrant Agent in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or similar law, or a decree or order by a court having jurisdiction in the premises shall have been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator (or similar official) of the Warrant Agent or of its property or affairs, or any public officer shall take charge or control of the Warrant Agent or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, a successor Warrant Agent, qualified as aforesaid, shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by the successor Warrant Agent of such appointment, the Warrant Agent shall cease to be Warrant Agent hereunder.

(d) Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, trusts, immunities, duties and obligations of such predecessor with like effect as if originally named as Warrant Agent hereunder, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as Warrant Agent hereunder.

(e) Any corporation into which the Warrant Agent hereunder may be merged or converted or any corporation with which the Warrant Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation to which the Warrant Agent shall sell or otherwise transfer all or substantially all the assets and business of the Warrant Agent, provided that it shall be qualified as aforesaid, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE 6

MISCELLANEOUS

6.1 Amendment. This Agreement may be amended by the parties hereto, without the consent of the holder of any Warrant Certificate, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or making any other provisions with respect to matters or questions arising under this Agreement as the Company and the Warrant Agent may deem necessary or desirable; provided that such action shall not materially adversely affect the interests of the holders of the Warrant Certificates.

6.2 Notices And Demands To The Company And Warrant Agent. If the Warrant Agent shall receive any notice or demand addressed to the Company by the holder of a Warrant Certificate pursuant to the provisions of the Warrant Certificates, the Warrant Agent shall promptly forward such notice or demand to the Company.

6.3 Addresses. Any communication from the Company to the Warrant Agent with respect to this Agreement shall be addressed to _____, Attention: _____ and any communication from the Warrant Agent to the Company with respect to this Agreement shall be addressed to Eiger BioPharmaceuticals, Inc., 350 Cambridge Avenue, Suite 350, Palo Alto, California, 94306 Attention: Chief Financial Officer (or such other address as shall be specified in writing by the Warrant Agent or by the Company).

6.4 Governing Law. This Agreement and each Warrant Certificate issued hereunder, and any claim, controversy or dispute arising under or related to this Agreement or any Warrant Certificate, shall be governed by and construed in accordance with the laws of the State of New York.

6.5 Delivery Of Prospectus. The Company shall furnish to the Warrant Agent sufficient copies of a prospectus meeting the requirements of the Securities Act of 1933, as amended, relating to the Warrant Securities deliverable upon exercise of the Warrants (the "**Prospectus**"), and the Warrant Agent agrees that upon the exercise of any Warrant, the Warrant Agent will deliver to the holder of the Warrant Certificate evidencing such Warrant, prior to or concurrently with the delivery of the Warrant Securities issued upon such exercise, a Prospectus.

The Warrant Agent shall not, by reason of any such delivery, assume any responsibility for the accuracy or adequacy of such Prospectus.

6.6 Obtaining Of Governmental Approvals. The Company will from time to time take all action which may be necessary to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and securities act filings under United States Federal and state laws (including without limitation a registration statement in respect of the Warrants and Warrant Securities under the Securities Act of 1933, as amended), which may be or become requisite in connection with the issuance, sale, transfer, and delivery of the Warrant Securities issued upon exercise of the Warrants, the issuance, sale, transfer and delivery of the Warrants or upon the expiration of the period during which the Warrants are exercisable.

6.7 Persons Having Rights Under Warrant Agreement. Nothing in this Agreement shall give to any person other than the Company, the Warrant Agent and the holders of the Warrant Certificates any right, remedy or claim under or by reason of this Agreement.

6.8 Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

6.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which as so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

6.10 Inspection Of Agreement. A copy of this Agreement shall be available at all reasonable times at the principal corporate trust office of the Warrant Agent for inspection by the holder of any Warrant Certificate. The Warrant Agent may require such holder to submit his Warrant Certificate for inspection by it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

EIGER BIOPHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

[WARRANT AGENT], as Warrant Agent

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO COMMON STOCK WARRANT AGREEMENT]

EXHIBIT A

**FORM OF WARRANT CERTIFICATE
[FACE OF WARRANT CERTIFICATE]**

[[Form if Warrants are attached to Other Securities and are not immediately detachable.]

[Prior to _____, this Warrant Certificate cannot be transferred or exchanged unless attached to a [Title of Other Securities].]

[Form of Legend if Warrants are not immediately exercisable.]

[Prior to _____, Warrants evidenced by this Warrant Certificate cannot be exercised.]

EXERCISABLE ONLY IF COUNTERSIGNED BY THE WARRANT AGENT AS PROVIDED HEREIN

VOID AFTER [] P.M., [] TIME, ON _____,

EIGER BIOPHARMACEUTICALS, INC.
WARRANT CERTIFICATE REPRESENTING
WARRANTS TO PURCHASE
COMMON STOCK, PAR VALUE \$0.000001 PER SHARE

No. _____

Warrants

This certifies that _____ or registered assigns is the registered owner of the above indicated number of Warrants, each Warrant entitling such owner [if Warrants are attached to Other Securities and are not immediately detachable—, subject to the registered owner qualifying as a “Holder” of this Warrant Certificate, as hereinafter defined),] to purchase, at any time [after [_____] p.m., [_____] time, [on _____ and] on or before [_____] p.m., [_____] time, on _____, _____ shares of Common Stock, par value \$0.000001 per share (the “**Warrant Securities**”), of Eiger BioPharmaceuticals, Inc. (the “**Company**”) on the following basis: during the period from _____, through and including _____, the exercise price per Warrant Security will be \$_____, subject to adjustment as provided in the Warrant Agreement (as hereinafter defined) (the “**Warrant Price**”). The Holder may exercise the Warrants evidenced hereby by providing certain information set forth on the back hereof and by paying in full, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], the Warrant Price for each Warrant Security with respect to which this Warrant is exercised to the Warrant Agent (as hereinafter defined) and by surrendering this Warrant Certificate, with the purchase form on the back hereof duly executed, at the corporate trust office of [name of Warrant Agent], or its successor as warrant agent (the “**Warrant Agent**”), which is, on the date hereof, at the address specified on the reverse hereof, and upon compliance with and subject to the conditions set forth herein and in the Warrant Agreement (as hereinafter defined).

The term “**Holder**” as used herein shall mean [if Warrants are attached to Other Securities and are not immediately detachable—prior to _____, _____ (the “**Detachable Date**”), the registered owner of the Company’s [title of Other Securities] to which this Warrant Certificate was initially attached, and after such Detachable Date,] the person in whose name at the time this Warrant Certificate shall be registered upon the books to be maintained by the Warrant Agent for that purpose pursuant to Section 4 of the Warrant Agreement.

The Warrants evidenced by this Warrant Certificate may be exercised to purchase a whole number of Warrant Securities in registered form. Upon any exercise of fewer than all of the Warrants evidenced by this Warrant Certificate, there shall be issued to the Holder hereof a new Warrant Certificate evidencing Warrants for the number of Warrant Securities remaining unexercised.

This Warrant Certificate is issued under and in accordance with the Warrant Agreement dated as of _____, _____ (the “**Warrant Agreement**”), between the Company and the Warrant Agent and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof. Copies of the Warrant Agreement are on file at the above-mentioned office of the Warrant Agent.

[If Warrants are attached to Other Securities and are not immediately detachable—Prior to the Detachable Date, this Warrant Certificate may be exchanged or transferred only together with the [Title of Other Securities] (the “**Other Securities**”) to which this Warrant Certificate was initially attached, and only for the purpose of effecting or in conjunction with, an exchange or transfer of such Other Security. Additionally, on or prior to the Detachable Date, each transfer of such Other Security on the register of the Other Securities shall operate also to transfer this Warrant Certificate. After such date, transfer of this] [If Warrants are attached to Other Securities and are immediately detachable—Transfer of this] Warrant Certificate may be registered when this Warrant Certificate is surrendered at the corporate trust office of the Warrant Agent by the registered owner or such owner’s assigns, in the manner and subject to the limitations provided in the Warrant Agreement.

[If Other Securities with Warrants which are not immediately detachable—Except as provided in the immediately preceding paragraph, after] [If Other Securities with Warrants which are immediately detachable or Warrants alone—After] countersignature by the Warrant Agent and prior to the expiration of this Warrant Certificate, this Warrant Certificate may be exchanged at the corporate trust office of the Warrant Agent for Warrant Certificates representing Warrants for the same aggregate number of Warrant Securities.

This Warrant Certificate shall not entitle the Holder hereof to any of the rights of a holder of the Warrant Securities, including, without limitation, the right to receive payments of dividends or distributions, if any, on the Warrant Securities (except to the extent set forth in the Warrant Agreement) or to exercise any voting rights.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Warrant Certificate shall not be valid or obligatory for any purpose until countersigned by the Warrant Agent.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed in its name and on its behalf by the facsimile signatures of its duly authorized officers.

Dated: _____

EIGER BIOPHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Countersigned:

[WARRANT AGENT], as Warrant Agent

By: _____

Name: _____

Title: _____

[REVERSE OF WARRANT CERTIFICATE]

(Instructions for Exercise of Warrant)

To exercise any Warrants evidenced hereby for Warrant Securities (as hereinafter defined), the Holder must pay, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], the Warrant Price in full for Warrants exercised, to [Warrant Agent] [address of Warrant Agent], Attn: _____, which payment must specify the name of the Holder and the number of Warrants exercised by such Holder. In addition, the Holder must complete the information required below and present this Warrant Certificate in person or by mail (certified or registered mail is recommended) to the Warrant Agent at the appropriate address set forth above. This Warrant Certificate, completed and duly executed, must be received by the Warrant Agent within five business days of the payment.

(To be executed upon exercise of Warrants)

The undersigned hereby irrevocably elects to exercise _____ Warrants, evidenced by this Warrant Certificate, to purchase _____ shares of the Common Stock, par value \$0.001 per share (the "**Warrant Securities**"), of Eiger BioPharmaceuticals, Inc. and represents that he has tendered payment for such Warrant Securities, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], to the order of Eiger BioPharmaceuticals, Inc., c/o [insert name and address of Warrant Agent], in the amount of \$____ in accordance with the terms hereof. The undersigned requests that said Warrant Securities be in fully registered form in the authorized denominations, registered in such names and delivered all as specified in accordance with the instructions set forth below.

If the number of Warrants exercised is less than all of the Warrants evidenced hereby, the undersigned requests that a new Warrant Certificate evidencing the Warrants for the number of Warrant Securities remaining unexercised be issued and delivered to the undersigned unless otherwise specified in the instructions below.

Dated _____

Name _____

Please Print _____

Address: _____

(Insert Social Security or Other Identifying Number of Holder)

Signature Guaranteed

Signature

(Signature must conform in all respects to name of holder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a FINRA member firm).

This Warrant may be exercised at the following addresses:

By hand at

By mail at

[Instructions as to form and delivery of Warrant Securities and, if applicable, Warrant Certificates evidencing Warrants for the number of Warrant Securities remaining unexercised—complete as appropriate.]

ASSIGNMENT

[Form of assignment to be executed if Warrant Holder desires to transfer Warrant]

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto:

(Please print name and address including zip code)

Please print Social Security or other identifying number

the right represented by the within Warrant to purchase _____ shares of [Title of Warrant Securities] of Eiger BioPharmaceuticals, Inc. to which the within Warrant relates and appoints _____ attorney to transfer such right on the books of the Warrant Agent with full power of substitution in the premises.

Dated _____

Signature _____

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Signature Guaranteed

EIGER BIOPHARMACEUTICALS, INC.

AND

_____, AS WARRANT AGENT

FORM OF PREFERRED STOCK
WARRANT AGREEMENT

DATED AS OF [____], 20____

EIGER BIOPHARMACEUTICALS, INC.
FORM OF PREFERRED STOCK WARRANT AGREEMENT

PREFERRED STOCK WARRANT AGREEMENT (this “*Agreement*”), dated as of _____ between **EIGER BIOPHARMACEUTICALS, INC.**, a Delaware corporation (the “*Company*”), and _____, a [corporation] [national banking association] organized and existing under the laws of _____ and having a corporate trust office in _____, as warrant agent (the “*Warrant Agent*”).

WHEREAS, the Company proposes to sell [if Warrants are sold with other securities—[title of such other securities being offered] (the “*Other Securities*”) with] warrant certificates evidencing one or more warrants (the “*Warrants*” or, individually, a “*Warrant*”) representing the right to purchase [title of Preferred Stock purchasable through exercise of Warrants] (the “*Warrant Securities*”), such warrant certificates and other warrant certificates issued pursuant to this Agreement being herein called the “*Warrant Certificates*”; and

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing so to act, in connection with the issuance, registration, transfer, exchange, exercise and replacement of the Warrant Certificates, and in this Agreement wishes to set forth, among other things, the form and provisions of the Warrant Certificates and the terms and conditions on which they may be issued, registered, transferred, exchanged, exercised and replaced.

NOW THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE 1

ISSUANCE OF WARRANTS AND EXECUTION AND DELIVERY OF WARRANT CERTIFICATES

1.1 Issuance of Warrants. [If Warrants alone—Upon issuance, each Warrant Certificate shall evidence one or more Warrants.] [If Other Securities and Warrants—Warrant Certificates shall be [initially] issued in connection with the issuance of the Other Securities [but shall be separately transferable on and after _____ (the “*Detachable Date*”) [and shall not be separately transferable] and each Warrant Certificate shall evidence one or more Warrants.] Each Warrant evidenced thereby shall represent the right, subject to the provisions contained herein and therein, to purchase one Warrant Security. [If Other Securities and Warrants—Warrant Certificates shall be initially issued in units with the Other Securities and each Warrant Certificate included in such a unit shall evidence _____ Warrants for each [\$_____ principal amount] [_____ shares] of Other Securities included in such unit.]

1.2 Execution And Delivery Of Warrant Certificates. Each Warrant Certificate, whenever issued, shall be in registered form substantially in the form set forth in **Exhibit A** hereto, shall be dated the date of its countersignature by the Warrant Agent and may have such letters, numbers, or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange on which the Warrants may be listed, or to conform to usage. The Warrant Certificates shall be signed on behalf of the Company by any of its present or future chief executive officers, presidents, senior vice presidents, vice presidents, chief financial officers, chief legal officers, treasurers, assistant treasurers, controllers, assistant controllers, secretaries or assistant secretaries under its corporate seal reproduced thereon. Such signatures may be manual or facsimile signatures of such authorized officers and may be imprinted or otherwise reproduced on the Warrant Certificates. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Warrant Certificates.

No Warrant Certificate shall be valid for any purpose, and no Warrant evidenced thereby shall be exercisable, until such Warrant Certificate has been countersigned by the manual signature of the Warrant Agent. Such signature by the Warrant Agent upon any Warrant Certificate executed by the Company shall be conclusive evidence that the Warrant Certificate so countersigned has been duly issued hereunder.

In case any officer of the Company who shall have signed any of the Warrant Certificates either manually or by facsimile signature shall cease to be such officer before the Warrant Certificates so signed shall have been countersigned and delivered by the Warrant Agent, such Warrant Certificates may be countersigned and delivered notwithstanding that the person who signed Warrant Certificates ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Warrant Certificate, shall be the proper officers of the Company, although at the date of the execution of this Agreement any such person was not such officer.

The term “holder” or “holder of a Warrant Certificate” as used herein shall mean any person in whose name at the time any Warrant Certificate shall be registered upon the books to be maintained by the Warrant Agent for that purpose [If Other Securities and Warrants are not immediately detachable—or upon the registration of the Other Securities prior to the Detachable Date. Prior to the Detachable Date, the Company will, or will cause the registrar of the Other Securities to, make available at all times to the Warrant Agent such information as to holders of the Other Securities as may be necessary to keep the Warrant Agent’s records up to date].

1.3 Issuance Of Warrant Certificates. Warrant Certificates evidencing the right to purchase Warrant Securities may be executed by the Company and delivered to the Warrant Agent upon the execution of this Warrant Agreement or from time to time thereafter. The Warrant Agent shall, upon receipt of Warrant Certificates duly executed on behalf of the Company, countersign such Warrant Certificates and shall deliver such Warrant Certificates to or upon the order of the Company.

ARTICLE 2

WARRANT PRICE, DURATION AND EXERCISE OF WARRANTS

2.1 Warrant Price. During the period specified in Section 2.2, each Warrant shall, subject to the terms of this Warrant Agreement and the applicable Warrant Certificate, entitle the holder thereof to purchase the number of Warrant Securities specified in the applicable Warrant Certificate at an exercise price of \$_____ per Warrant Security, subject to adjustment upon the occurrence of certain events, as hereinafter provided. Such purchase price per Warrant Security is referred to in this Agreement as the "**Warrant Price**."

2.2 Duration Of Warrants. Each Warrant may be exercised in whole or in part at any time, as specified herein, on or after [the date thereof] [] and at or before [] p.m., [] time, on or such later date as the Company may designate by notice to the Warrant Agent and the holders of Warrant Certificates mailed to their addresses as set forth in the record books of the Warrant Agent (the "**Expiration Date**"). Each Warrant not exercised at or before [] p.m., [] time, on the Expiration Date shall become void, and all rights of the holder of the Warrant Certificate evidencing such Warrant under this Agreement shall cease.

2.3 Exercise Of Warrants.

(a) During the period specified in Section 2.2, the Warrants may be exercised to purchase a whole number of Warrant Securities in registered form by providing certain information as set forth on the reverse side of the Warrant Certificate and by paying in full, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds] the Warrant Price for each Warrant Security with respect to which a Warrant is being exercised to the Warrant Agent at its corporate trust office, provided that such exercise is subject to receipt within five business days of such payment by the Warrant Agent of the Warrant Certificate with the form of election to purchase Warrant Securities set forth on the reverse side of the Warrant Certificate properly completed and duly executed. The date on which payment in full of the Warrant Price is received by the Warrant Agent shall, subject to receipt of the Warrant Certificate as aforesaid, be deemed to be the date on which the Warrant is exercised; provided, however, that if, at the date of receipt of such Warrant Certificates and payment in full of the Warrant Price, the transfer books for the Warrant Securities purchasable upon the exercise of such Warrants shall be closed, no such receipt of such Warrant Certificates and no such payment of such Warrant Price shall be effective to constitute the person so designated to be named as the holder of record of such Warrant Securities on such date, but shall be effective to constitute such person as the holder of record of such Warrant Securities for all purposes at the opening of business on the next succeeding day on which the transfer books for the Warrant Securities purchasable upon the exercise of such Warrants shall be opened, and the certificates for the Warrant Securities in respect of which such Warrants are then exercised shall be issuable as of the date on such next succeeding day on which the transfer books shall next be opened, and until such date the Company shall be under no duty to deliver any certificate for such Warrant

Securities. The Warrant Agent shall deposit all funds received by it in payment of the Warrant Price in an account of the Company maintained with it and shall advise the Company by telephone at the end of each day on which a payment for the exercise of Warrants is received of the amount so deposited to its account. The Warrant Agent shall promptly confirm such telephone advice to the Company in writing.

(b) The Warrant Agent shall, from time to time, as promptly as practicable, advise the Company of (i) the number of Warrant Securities with respect to which Warrants were exercised, (ii) the instructions of each holder of the Warrant Certificates evidencing such Warrants with respect to delivery of the Warrant Securities to which such holder is entitled upon such exercise, (iii) delivery of Warrant Certificates evidencing the balance, if any, of the Warrants for the remaining Warrant Securities after such exercise, and (iv) such other information as the Company shall reasonably require.

(c) As soon as practicable after the exercise of any Warrant, the Company shall issue to or upon the order of the holder of the Warrant Certificate evidencing such Warrant the Warrant Securities to which such holder is entitled, in fully registered form, registered in such name or names as may be directed by such holder. If fewer than all of the Warrants evidenced by such Warrant Certificate are exercised, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, a new Warrant Certificate evidencing Warrants for the number of Warrant Securities remaining unexercised.

(d) The Company shall not be required to pay any stamp or other tax or other governmental charge required to be paid in connection with any transfer involved in the issue of the Warrant Securities, and in the event that any such transfer is involved, the Company shall not be required to issue or deliver any Warrant Security until such tax or other charge shall have been paid or it has been established to the Company's satisfaction that no such tax or other charge is due.

(e) Prior to the issuance of any Warrants there shall have been reserved, and the Company shall at all times through the Expiration Date keep reserved, out of its authorized but unissued Warrant Securities, a number of shares sufficient to provide for the exercise of the Warrants.

ARTICLE 3

OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS OF WARRANT CERTIFICATES

3.1 No Rights As Warrant Securityholder Conferred By Warrants or Warrant Certificates. No Warrant Certificate or Warrant evidenced thereby shall entitle the holder thereof to any of the rights of a holder of Warrant Securities, including, without limitation, the right to receive the payment of dividends or distributions, if any, on the Warrant Securities or to exercise any voting rights, except to the extent expressly set forth in this Agreement or the applicable Warrant Certificate.

3.2 Lost, Stolen, Mutilated or Destroyed Warrant Certificates. Upon receipt by the Warrant Agent of evidence reasonably satisfactory to it and the Company of the ownership of and the loss, theft, destruction or mutilation of any Warrant Certificate and/or indemnity reasonably satisfactory to the Warrant Agent and the Company and, in the case of mutilation, upon surrender of the mutilated Warrant Certificate to the Warrant Agent for cancellation, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, in exchange for or in lieu of the lost, stolen, destroyed or mutilated Warrant Certificate, a new Warrant Certificate of the same tenor and evidencing Warrants for a like number of Warrant Securities. Upon the issuance of any new Warrant Certificate under this Section 3.2, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Warrant Agent) in connection therewith. Every substitute Warrant Certificate executed and delivered pursuant to this Section 3.2 in lieu of any lost, stolen or destroyed Warrant Certificate shall represent an additional contractual obligation of the Company, whether or not the lost, stolen or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Section 3.2 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement of mutilated, lost, stolen or destroyed Warrant Certificates.

3.3 Holder of Warrant Certificate May Enforce Rights. Notwithstanding any of the provisions of this Agreement, any holder of a Warrant Certificate, without the consent of the Warrant Agent, the holder of any Warrant Securities or the holder of any other Warrant Certificate, may, in such holder's own behalf and for such holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such holder's right to exercise the Warrants evidenced by such holder's Warrant Certificate in the manner provided in such holder's Warrant Certificate and in this Agreement.

3.4 Adjustments.

(a) In case the Company shall at any time subdivide its outstanding shares of [title of Preferred Stock purchasable through exercise of Warrants] into a greater number of shares, the Warrant Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of Warrant Securities purchasable under the Warrants shall be proportionately increased. Conversely, in case the outstanding shares of [title of Preferred Stock purchasable through exercise of Warrants] of the Company shall be combined into a smaller number of shares, the Warrant Price in effect immediately prior to such combination shall be proportionately increased and the number of Warrant Securities purchasable under the Warrants shall be proportionately decreased.

(b) If at any time or from time to time the holders of [title of Preferred Stock purchasable through exercise of Warrants] (or any shares of stock or other securities at the time receivable upon the exercise of the Warrants) shall have received or become entitled to receive, without payment therefore,

(i) [title of Preferred Stock purchasable through exercise of Warrants] or any shares of stock or other securities which are at any time directly or indirectly convertible into or exchangeable for [title of Preferred Stock purchasable through exercise of Warrants], or any rights or options to subscribe for, purchase or otherwise acquire any of the foregoing by way of dividend or other distribution;

(ii) any cash paid or payable otherwise than in accordance with the terms of [title of Preferred Stock purchasable through exercise of Warrants] or otherwise than as a cash dividend paid or payable out of the Company's current or retained earnings;

(iii) any evidence of the Company's indebtedness or rights to subscribe for or purchase the Company's indebtedness; or

(iv) [title of Preferred Stock purchasable through exercise of Warrants] or additional stock or other securities or property (including cash) by way of spinoff, split-up, reclassification, combination of shares or similar corporate rearrangement (other than shares of [title of Preferred Stock purchasable through exercise of Warrants] issued as a stock split or adjustments in respect of which shall be covered by the terms of Section 3.4(a) above), then and in each such case, the holder of each Warrant shall, upon the exercise of the Warrant, be entitled to receive, in addition to the number of Warrant Securities receivable thereupon, and without payment of any additional consideration therefore, the amount of stock and other securities and property (including cash and indebtedness or rights to subscribe for or purchase indebtedness) which such holder would hold on the date of such exercise had he been the holder of record of such Warrant Securities as of the date on which holders of [title of Preferred Stock purchasable through exercise of Warrants] received or became entitled to receive such shares or all other additional stock and other securities and property.

(c) In case of (i) any reclassification, capital reorganization, or change in the [title of Preferred Stock purchasable through the exercise of the Warrants] of the Company (other than as a result of a subdivision, combination or stock dividend provided for in Section 3.4(a) or Section 3.4(b) above), (ii) share exchange, merger or similar transaction of the Company with or into another person or entity (other than a share exchange, merger or similar transaction in which the Company is the acquiring or surviving corporation and which does not result in any change in the [title of Preferred Stock purchasable through the exercise of the Warrants] other than the issuance of additional shares of [title of Preferred Stock purchasable through the exercise of the Warrants]) or (iii) the sale, exchange, lease, transfer or other disposition of all or substantially all of the properties and assets of the Company as an entirety (in any such case, a "**Reorganization Event**"), then, as a condition of such Reorganization Event, lawful provisions shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the holders of the Warrants, so that the holders of the Warrants shall have the right at any time prior to the expiration of the Warrants to purchase, at a total price equal to that payable upon the exercise of the Warrants, the kind and amount of shares of stock and other securities and property receivable in connection with such Reorganization Event by a holder of the same number of shares of [title of Preferred Stock purchasable through the exercise of the Warrants] as were purchasable by the holders of the Warrants immediately prior to such Reorganization Event. In any such case appropriate provisions shall be made with respect to the rights and interests of the holders of the Warrants so that the provisions hereof shall thereafter be

applicable with respect to any shares of stock or other securities and property deliverable upon exercise the Warrants, and appropriate adjustments shall be made to the Warrant Price payable hereunder provided the aggregate purchase price shall remain the same. In the case of any transaction described in clauses (ii) and (iii) above, the Company shall thereupon be relieved of any further obligation hereunder or under the Warrants, and the Company as the predecessor corporation may thereupon or at any time thereafter be dissolved, wound up or liquidated. Such successor or assuming entity thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Warrants issuable hereunder which heretofore shall not have been signed by the Company, and may execute and deliver securities in its own name, in fulfillment of its obligations to deliver Warrant Securities upon exercise of the Warrants. All the Warrants so issued shall in all respects have the same legal rank and benefit under this Agreement as the Warrants theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Warrants had been issued at the date of the execution hereof. In any case of any such Reorganization Event, such changes in phraseology and form (but not in substance) may be made in the Warrants thereafter to be issued as may be appropriate. The Warrant Agent may receive a written opinion of legal counsel as conclusive evidence that any such Reorganization Event complies with the provisions of this Section 3.4.

(d) The Company may, at its option, at any time until the Expiration Date, reduce the then current Warrant Price to any amount deemed appropriate by the Board of Directors of the Company for any period not exceeding twenty consecutive days (as evidenced in a resolution adopted by such Board of Directors), but only upon giving the notices required by Section 3.5 at least ten days prior to taking such action.

(e) Except as herein otherwise expressly provided, no adjustment in the Warrant Price shall be made by reason of the issuance of any securities of the Company or for any other reason whatsoever.

(f) No fractional Warrant Securities shall be issued upon the exercise of Warrants. If more than one Warrant shall be exercised at one time by the same holder, the number of full Warrant Securities which shall be issuable upon such exercise shall be computed on the basis of the aggregate number of Warrant Securities purchased pursuant to the Warrants so exercised. Instead of any fractional Warrant Security which would otherwise be issuable upon exercise of any Warrant, the Company shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the last sales price (or bid price if there were no sales) per Warrant Security, in either case as reported on the principal registered national securities exchange on which the Warrant Securities are listed or admitted to trading on the business day that next precedes the day of exercise or, if the Warrant Securities are not then listed or admitted to trading on any registered national securities exchange, the average of the closing high bid and low asked prices as reported on the OTC Bulletin Board Service (the "**OTC Bulletin Board**") operated by the Financial Industry Regulatory Authority, Inc. ("**FINRA**") or, if not available on the OTC Bulletin Board, then the average of the closing high bid and low asked prices as reported on any other U.S. quotation medium or inter-dealer quotation system on such date, or if on any such date the Warrant Securities are not listed or admitted to trading on a registered national securities exchange, are not included in the OTC Bulletin Board, and are not quoted on any other U.S. quotation medium or inter-dealer quotation system, an amount equal to the same fraction of the average of the closing bid and asked prices as furnished by any FINRA member firm selected from time to time by the Company for that purpose at the close of business on the business day that next precedes the day of exercise.

(g) Whenever the Warrant Price then in effect is adjusted as herein provided, the Company shall mail to each holder of the Warrants at such holder's address as it shall appear on the books of the Company a statement setting forth the adjusted Warrant Price then and thereafter effective under the provisions hereof, together with the facts, in reasonable detail, upon which such adjustment is based.

(h) Notwithstanding anything to the contrary herein, in no event shall the Warrant Price, as adjusted in accordance with the terms hereof, be less than the par value per share of [title of Preferred Stock purchasable through exercise of Warrants].

3.5 Notice to Warrantholders. In case the Company shall (a) effect any dividend or distribution described in Section 3.4(b), (b) effect any Reorganization Event, (c) make any distribution on or in respect of the [title of Preferred Stock purchasable through the exercise of the Warrants] in connection with the dissolution, liquidation or winding up of the Company, or (d) reduce the then current Warrant Price pursuant to Section 3.4(d), then the Company shall mail to each holder of Warrants at such holder's address as it shall appear on the books of the Warrant Agent, at least ten days prior to the applicable date hereinafter specified, a notice stating (x) the record date for such dividend or distribution, or, if a record is not to be taken, the date as of which the holders of record of [title of Preferred Stock purchasable through the exercise of the Warrants] that will be entitled to such dividend or distribution are to be determined, (y) the date on which such Reorganization Event, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of [title of Preferred Stock purchasable through the exercise of the Warrants] of record shall be entitled to exchange their shares of [title of Preferred Stock purchasable through the exercise of the Warrants] for securities or other property deliverable upon such Reorganization Event, dissolution, liquidation or winding up, or (z) the first date on which the then current Warrant Price shall be reduced pursuant to Section 3.4(d). No failure to mail such notice nor any defect therein or in the mailing thereof shall affect any such transaction or any adjustment in the Warrant Price required by Section 3.4.

3.6 [IF THE WARRANTS ARE SUBJECT TO ACCELERATION BY THE COMPANY, INSERT—ACCELERATION OF WARRANTS BY THE COMPANY.

(a) At any time on or after _____, the Company shall have the right to accelerate any or all Warrants at any time by causing them to expire at the close of business on the day next preceding a specified date (the "**Acceleration Date**"), if the Market Price (as hereinafter defined) of the [title of Preferred Stock purchasable through the exercise of the Warrants] equals or exceeds ____ percent (____%) of the then effective Warrant Price on any twenty Trading Days (as hereinafter defined) within a period of thirty consecutive Trading Days ending no more than five Trading Days prior to the date on which the Company gives notice to the Warrant Agent of its election to accelerate the Warrants.

(b) “**Market Price**” for each Trading Day shall be, if the [title of Preferred Stock purchasable through the exercise of the Warrants] is listed or admitted to trading on any registered national securities exchange, the last reported sale price, regular way (or, if no such price is reported, the average of the reported closing bid and asked prices, regular way) of [title of Preferred Stock purchasable through the exercise of the Warrants], in either case as reported on the principal registered national securities exchange on which the [title of Preferred Stock purchasable through the exercise of the Warrants] is listed or admitted to trading or, if not listed or admitted to trading on any registered national securities exchange, the average of the closing high bid and low asked prices as reported on the OTC Bulletin Board operated by FINRA, or if not available on the OTC Bulletin Board, then the average of the closing high bid and low asked prices as reported on any other U.S. quotation medium or inter-dealer quotation system, or if on any such date the shares of [title of Preferred Stock purchasable through the exercise of the Warrants] are not listed or admitted to trading on a registered national securities exchange, are not included in the OTC Bulletin Board, and are not quoted on any other U.S. quotation medium or inter-dealer quotation system, the average of the closing bid and asked prices as furnished by any FINRA member firm selected from time to time by the Company for that purpose. “**Trading Day**” shall be each Monday through Friday, other than any day on which securities are not traded in the system or on the exchange that is the principal market for the [title of Preferred Stock purchasable through the exercise of the Warrants], as determined by the Board of Directors of the Company.

(c) In the event of an acceleration of less than all of the Warrants, the Warrant Agent shall select the Warrants to be accelerated by lot, pro rata or in such other manner as it deems, in its discretion, to be fair and appropriate.

(d) Notice of an acceleration specifying the Acceleration Date shall be sent by mail first class, postage prepaid, to each registered holder of a Warrant Certificate representing a Warrant accelerated at such holder’s address appearing on the books of the Warrant Agent not more than sixty days nor less than thirty days before the Acceleration Date. Such notice of an acceleration also shall be given no more than twenty days, and no less than ten days, prior to the mailing of notice to registered holders of Warrants pursuant to this Section 3.6, by publication at least once in a newspaper of general circulation in the City of New York.

(e) Any Warrant accelerated may be exercised until [_____] p.m., [_____] time, on the business day next preceding the Acceleration Date. The Warrant Price shall be payable as provided in Section 2.]

ARTICLE 4

EXCHANGE AND TRANSFER OF WARRANT CERTIFICATES

4.1 Exchange and Transfer of Warrant Certificates. [If Other Securities with Warrants which are immediately detachable—Upon] [If Other Securities with Warrants which are not immediately detachable—Prior to the Detachable Date, a Warrant Certificate may be exchanged or transferred only together with the Other Security to which the Warrant Certificate was initially attached, and only for the purpose of effecting or in conjunction with an exchange or transfer of such Other Security. Prior to any Detachable Date, each transfer of the Other Security shall operate also to transfer the related Warrant Certificates. After the Detachable Date, upon] surrender at the corporate trust office of the Warrant Agent, Warrant Certificates

evidencing Warrants may be exchanged for Warrant Certificates in other denominations evidencing such Warrants or the transfer thereof may be registered in whole or in part; provided that such other Warrant Certificates evidence Warrants for the same aggregate number of Warrant Securities as the Warrant Certificates so surrendered. The Warrant Agent shall keep, at its corporate trust office, books in which, subject to such reasonable regulations as it may prescribe, it shall register Warrant Certificates and exchanges and transfers of outstanding Warrant Certificates, upon surrender of the Warrant Certificates to the Warrant Agent at its corporate trust office for exchange or registration of transfer, properly endorsed or accompanied by appropriate instruments of registration of transfer and written instructions for transfer, all in form satisfactory to the Company and the Warrant Agent. No service charge shall be made for any exchange or registration of transfer of Warrant Certificates, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed in connection with any such exchange or registration of transfer. Whenever any Warrant Certificates are so surrendered for exchange or registration of transfer, an authorized officer of the Warrant Agent shall manually countersign and deliver to the person or persons entitled thereto a Warrant Certificate or Warrant Certificates duly authorized and executed by the Company, as so requested. The Warrant Agent shall not be required to effect any exchange or registration of transfer which will result in the issuance of a Warrant Certificate evidencing a Warrant for a fraction of a Warrant Security or a number of Warrants for a whole number of Warrant Securities and a fraction of a Warrant Security. All Warrant Certificates issued upon any exchange or registration of transfer of Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations and entitled to the same benefits under this Agreement as the Warrant Certificate surrendered for such exchange or registration of transfer.

4.2 Treatment of Holders of Warrant Certificates. [If Other Securities and Warrants are not immediately detachable—Prior to the Detachable Date, the Company, the Warrant Agent and all other persons may treat the owner of the Other Security as the owner of the Warrant Certificates initially attached thereto for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced by such Warrant Certificates, any notice to the contrary notwithstanding. After the Detachable Date and prior to due presentment of a Warrant Certificate for registration of transfer, the] [The] Company, the Warrant Agent and all other persons may treat the registered holder of a Warrant Certificate as the absolute owner thereof for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced thereby, any notice to the contrary notwithstanding.

4.3 Cancellation of Warrant Certificates. Any Warrant Certificate surrendered for exchange, registration of transfer or exercise of the Warrants evidenced thereby shall, if surrendered to the Company, be delivered to the Warrant Agent and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly canceled by the Warrant Agent and shall not be reissued and, except as expressly permitted by this Agreement, no Warrant Certificate shall be issued hereunder in exchange therefor or in lieu thereof. The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of canceled Warrant Certificates in a manner satisfactory to the Company.

ARTICLE 5

CONCERNING THE WARRANT AGENT

5.1 Warrant Agent. The Company hereby appoints _____ as Warrant Agent of the Company in respect of the Warrants and the Warrant Certificates upon the terms and subject to the conditions herein set forth, and _____ hereby accepts such appointment. The Warrant Agent shall have the powers and authority granted to and conferred upon it in the Warrant Certificates and hereby and such further powers and authority to act on behalf of the Company as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Warrant Certificates are subject to and governed by the terms and provisions hereof.

5.2 Conditions of Warrant Agent's Obligations. The Warrant Agent accepts its obligations herein set forth upon the terms and conditions hereof, including the following to all of which the Company agrees and to all of which the rights hereunder of the holders from time to time of the Warrant Certificates shall be subject:

(a) Compensation and Indemnification. The Company agrees promptly to pay the Warrant Agent the compensation to be agreed upon with the Company for all services rendered by the Warrant Agent and to reimburse the Warrant Agent for reasonable out-of-pocket expenses (including reasonable counsel fees) incurred without negligence, bad faith or willful misconduct by the Warrant Agent in connection with the services rendered hereunder by the Warrant Agent. The Company also agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence, bad faith or willful misconduct on the part of the Warrant Agent, arising out of or in connection with its acting as Warrant Agent hereunder, including the reasonable costs and expenses of defending against any claim of such liability.

(b) Agent for the Company. In acting under this Warrant Agreement and in connection with the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligations or relationship of agency or trust for or with any of the holders of Warrant Certificates or beneficial owners of Warrants.

(c) Counsel. The Warrant Agent may consult with counsel satisfactory to it, which may include counsel for the Company, and the written advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the advice of such counsel.

(d) Documents. The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or omitted by it in reliance upon any Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties.

(e) Certain Transactions. The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire any interest in, Warrants, with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as depository, trustee or agent for, any committee or body of holders of Warrant Securities or other obligations of the Company as freely as if it were not the Warrant Agent hereunder. Nothing in this Warrant Agreement shall be deemed to prevent the Warrant Agent from acting as trustee under any indenture to which the Company is a party.

(f) No Liability for Interest. Unless otherwise agreed with the Company, the Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(g) No Liability for Invalidity. The Warrant Agent shall have no liability with respect to any invalidity of this Agreement or any of the Warrant Certificates (except as to the Warrant Agent's countersignature thereon).

(h) No Responsibility for Representations. The Warrant Agent shall not be responsible for any of the recitals or representations herein or in the Warrant Certificates (except as to the Warrant Agent's countersignature thereon), all of which are made solely by the Company.

(i) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are herein and in the Warrant Certificates specifically set forth and no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a holder of a Warrant Certificate with respect to such default, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or, except as provided in Section 6.2 hereof, to make any demand upon the Company.

5.3 Resignation, Removal and Appointment of Successors.

(a) The Company agrees, for the benefit of the holders from time to time of the Warrant Certificates, that there shall at all times be a Warrant Agent hereunder until all the Warrants have been exercised or are no longer exercisable.

(b) The Warrant Agent may at any time resign as agent by giving written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective; provided that such date shall not be less than three months after the date on which such notice is given unless the Company otherwise agrees. The Warrant

Agent hereunder may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the intended date when it shall become effective. Such resignation or removal shall take effect upon the appointment by the Company, as hereinafter provided, of a successor Warrant Agent (which shall be a bank or trust company authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers) and the acceptance of such appointment by such successor Warrant Agent. The obligation of the Company under Section 5.2(a) shall continue to the extent set forth therein notwithstanding the resignation or removal of the Warrant Agent.

(c) In case at any time the Warrant Agent shall resign, or shall be removed, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or shall commence a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or under any other applicable Federal or state bankruptcy, insolvency or similar law or shall consent to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator (or other similar official) of the Warrant Agent or its property or affairs, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of any such action, or a decree or order for relief by a court having jurisdiction in the premises shall have been entered in respect of the Warrant Agent in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or similar law, or a decree or order by a court having jurisdiction in the premises shall have been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator (or similar official) of the Warrant Agent or of its property or affairs, or any public officer shall take charge or control of the Warrant Agent or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, a successor Warrant Agent, qualified as aforesaid, shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by the successor Warrant Agent of such appointment, the Warrant Agent shall cease to be Warrant Agent hereunder.

(d) Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, trusts, immunities, duties and obligations of such predecessor with like effect as if originally named as Warrant Agent hereunder, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as Warrant Agent hereunder.

(e) Any corporation into which the Warrant Agent hereunder may be merged or converted or any corporation with which the Warrant Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation to which the Warrant Agent shall sell or otherwise transfer all or substantially all the assets and business of the Warrant Agent, provided that it shall be qualified as aforesaid, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE 6

MISCELLANEOUS

6.1 Amendment. This Agreement may be amended by the parties hereto, without the consent of the holder of any Warrant Certificate, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or making any other provisions with respect to matters or questions arising under this Agreement as the Company and the Warrant Agent may deem necessary or desirable; provided that such action shall not materially adversely affect the interests of the holders of the Warrant Certificates.

6.2 Notices and Demands to the Company and Warrant Agent. If the Warrant Agent shall receive any notice or demand addressed to the Company by the holder of a Warrant Certificate pursuant to the provisions of the Warrant Certificates, the Warrant Agent shall promptly forward such notice or demand to the Company.

6.3 Addresses. Any communication from the Company to the Warrant Agent with respect to this Agreement shall be addressed to _____, Attention: _____ and any communication from the Warrant Agent to the Company with respect to this Agreement shall be addressed to Eiger BioPharmaceuticals, Inc., 350 Cambridge Avenue, Suite 350, Palo Alto, CA 94306, Attention: Chief Financial Officer (or such other address as shall be specified in writing by the Warrant Agent or by the Company).

6.4 Governing Law. This Agreement and each Warrant Certificate issued hereunder, and any claim, controversy or dispute arising under or related to this Agreement or any Warrant Certificate, shall be governed by and construed in accordance with the laws of the State of New York.

6.5 Delivery of Prospectus. The Company shall furnish to the Warrant Agent sufficient copies of a prospectus meeting the requirements of the Securities Act of 1933, as amended, relating to the Warrant Securities deliverable upon exercise of the Warrants (the "**Prospectus**"), and the Warrant Agent agrees that upon the exercise of any Warrant, the Warrant Agent will deliver to the holder of the Warrant Certificate evidencing such Warrant, prior to or concurrently with the delivery of the Warrant Securities issued upon such exercise, a Prospectus.

The Warrant Agent shall not, by reason of any such delivery, assume any responsibility for the accuracy or adequacy of such Prospectus.

6.6 Obtaining of Governmental Approvals. The Company will from time to time take all action which may be necessary to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and securities act filings under United States Federal and state laws (including without limitation a registration statement in respect of the Warrants and Warrant Securities under the Securities Act of 1933, as amended), which may be or become requisite in connection with the issuance, sale, transfer, and delivery of the Warrant Securities issued upon exercise of the Warrants, the issuance, sale, transfer and delivery of the Warrants or upon the expiration of the period during which the Warrants are exercisable.

6.7 Persons Having Rights Under Warrant Agreement. Nothing in this Agreement shall give to any person other than the Company, the Warrant Agent and the holders of the Warrant Certificates any right, remedy or claim under or by reason of this Agreement.

6.8 Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

6.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which as so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

6.10 Inspection of Agreement. A copy of this Agreement shall be available at all reasonable times at the principal corporate trust office of the Warrant Agent for inspection by the holder of any Warrant Certificate. The Warrant Agent may require such holder to submit his Warrant Certificate for inspection by it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

EIGER BIOPHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

[WARRANT AGENT], as Warrant Agent

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO PREFERRED STOCK WARRANT AGREEMENT]

EXHIBIT A

**FORM OF WARRANT CERTIFICATE
[FACE OF WARRANT CERTIFICATE]**

[[Form if Warrants are attached to Other Securities and are not immediately detachable.]

[Prior to _____, this Warrant Certificate cannot be transferred or exchanged unless attached to a [Title of Other Securities].]

[Form of Legend if Warrants are not immediately exercisable.]

[Prior to _____, Warrants evidenced by this Warrant Certificate cannot be exercised.]

EXERCISABLE ONLY IF COUNTERSIGNED BY THE WARRANT AGENT AS PROVIDED HEREIN

VOID AFTER [_____] P.M., [_____] TIME, ON _____,

EIGER BIOPHARMACEUTICALS, INC.
WARRANT CERTIFICATE REPRESENTING
WARRANTS TO PURCHASE
[TITLE OF WARRANT SECURITIES]

No. _____

Warrants

This certifies that _____ or registered assigns is the registered owner of the above indicated number of Warrants, each Warrant entitling such owner [if Warrants are attached to Other Securities and are not immediately detachable—, subject to the registered owner qualifying as a “Holder” of this Warrant Certificate, as hereinafter defined),] to purchase, at any time [after [_____] p.m., [_____] time, on and] on or before [_____] p.m., [_____] time, on _____ shares of [Title of Warrant Securities] (the “**Warrant Securities**”), of Eiger BioPharmaceuticals, Inc. (the “**Company**”) on the following basis: during the period from _____, through and including _____, the exercise price per Warrant Security will be \$_____, subject to adjustment as provided in the Warrant Agreement (as hereinafter defined) (the “**Warrant Price**”). The Holder may exercise the Warrants evidenced hereby by providing certain information set forth on the back hereof and by paying in full, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], the Warrant Price for each Warrant Security with respect to which this Warrant is exercised to the Warrant Agent (as hereinafter defined) and by surrendering this Warrant Certificate, with the purchase form on the back hereof duly executed, at the corporate trust office of [name of Warrant Agent], or its successor as warrant agent (the “**Warrant Agent**”), which is, on the date hereof, at the address specified on the reverse hereof, and upon compliance with and subject to the conditions set forth herein and in the Warrant Agreement (as hereinafter defined).

The term “Holder” as used herein shall mean [if Warrants are attached to Other Securities and are not immediately detachable—prior to _____ (the “**Detachable Date**”), the registered owner of the Company’s [title of Other Securities] to which this Warrant Certificate was initially attached, and after such Detachable Date,] the person in whose name at the time this Warrant Certificate shall be registered upon the books to be maintained by the Warrant Agent for that purpose pursuant to Section 4 of the Warrant Agreement.

The Warrants evidenced by this Warrant Certificate may be exercised to purchase a whole number of Warrant Securities in registered form. Upon any exercise of fewer than all of the Warrants evidenced by this Warrant Certificate, there shall be issued to the Holder hereof a new Warrant Certificate evidencing Warrants for the number of Warrant Securities remaining unexercised.

This Warrant Certificate is issued under and in accordance with the Warrant Agreement dated as of _____, _____ (the “**Warrant Agreement**”), between the Company and the Warrant Agent and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof. Copies of the Warrant Agreement are on file at the above-mentioned office of the Warrant Agent.

[If Warrants are attached to Other Securities and are not immediately detachable – Prior to the Detachable Date, this Warrant Certificate may be exchanged or transferred only together with the [Title of Other Securities] (the “**Other Securities**”) to which this Warrant Certificate was initially attached, and only for the purpose of effecting or in conjunction with, an exchange or transfer of such Other Security. Additionally, on or prior to the Detachable Date, each transfer of such Other Security on the register of the Other Securities shall operate also to transfer this Warrant Certificate. After such date, transfer of this] [If Warrants are attached to Other Securities and are immediately detachable – Transfer of this] Warrant Certificate may be registered when this Warrant Certificate is surrendered at the corporate trust office of the Warrant Agent by the registered owner or such owner’s assigns, in the manner and subject to the limitations provided in the Warrant Agreement.

[If Other Securities with Warrants which are not immediately detachable – Except as provided in the immediately preceding paragraph, after] [If Other Securities with Warrants which are immediately detachable or Warrants alone – After] countersignature by the Warrant Agent and prior to the expiration of this Warrant Certificate, this Warrant Certificate may be exchanged at the corporate trust office of the Warrant Agent for Warrant Certificates representing Warrants for the same aggregate number of Warrant Securities.

This Warrant Certificate shall not entitle the Holder hereof to any of the rights of a holder of the Warrant Securities, including, without limitation, the right to receive payments of dividends or distributions, if any, on the Warrant Securities (except to the extent set forth in the Warrant Agreement) or to exercise any voting rights.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Warrant Certificate shall not be valid or obligatory for any purpose until countersigned by the Warrant Agent.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed in its name and on its behalf by the facsimile signatures of its duly authorized officers.

Dated: _____

EIGER BIOPHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Countersigned:

[WARRANT AGENT], as Warrant Agent

By: _____

Name: _____

Title: _____

[REVERSE OF WARRANT CERTIFICATE]

(Instructions for Exercise of Warrant)

To exercise any Warrants evidenced hereby for Warrant Securities (as hereinafter defined), the Holder must pay, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], the Warrant Price in full for Warrants exercised, to [Warrant Agent] [address of Warrant Agent], Attn: _____, which payment must specify the name of the Holder and the number of Warrants exercised by such Holder. In addition, the Holder must complete the information required below and present this Warrant Certificate in person or by mail (certified or registered mail is recommended) to the Warrant Agent at the appropriate address set forth above. This Warrant Certificate, completed and duly executed, must be received by the Warrant Agent within five business days of the payment.

(To be executed upon exercise of Warrants)

The undersigned hereby irrevocably elects to exercise _____ Warrants, evidenced by this Warrant Certificate, to purchase _____ shares of the [Title of Warrant Securities] (the "Warrant Securities"), of Eiger BioPharmaceuticals, Inc. and represents that he has tendered payment for such Warrant Securities, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], to the order of Eiger BioPharmaceuticals, Inc., c/o [insert name and address of Warrant Agent], in the amount of \$____ in accordance with the terms hereof. The undersigned requests that said Warrant Securities be in fully registered form in the authorized denominations, registered in such names and delivered all as specified in accordance with the instructions set forth below.

If the number of Warrants exercised is less than all of the Warrants evidenced hereby, the undersigned requests that a new Warrant Certificate evidencing the Warrants for the number of Warrant Securities remaining unexercised be issued and delivered to the undersigned unless otherwise specified in the instructions below.

Dated _____

Name _____

Please Print _____

Address: _____

(Insert Social Security or Other Identifying Number of Holder)

Signature Guaranteed

Signature

(Signature must conform in all respects to name of holder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a FINRA member firm).

This Warrant may be exercised at the following addresses:

By hand at

By mail at

[Instructions as to form and delivery of Warrant Securities and, if applicable, Warrant Certificates evidencing Warrants for the number of Warrant Securities remaining unexercised—complete as appropriate.]

ASSIGNMENT

[Form of assignment to be executed if Warrant Holder desires to transfer Warrant]

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto:

(Please print name and address including zip code)

Please print Social Security or other identifying number

the right represented by the within Warrant to purchase _____ shares of [Title of Warrant Securities] of Eiger BioPharmaceuticals, Inc. to which the within Warrant relates and appoints _____ attorney to transfer such right on the books of the Warrant Agent with full power of substitution in the premises.

Dated _____

Signature _____

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Signature Guaranteed

EIGER BIOPHARMACEUTICALS, INC.

AND

_____, AS WARRANT AGENT

FORM OF DEBT SECURITIES
WARRANT AGREEMENT
DATED AS OF [____], 20____

EIGER BIOPHARMACEUTICALS, INC.
FORM OF DEBT SECURITIES WARRANT AGREEMENT

DEBT SECURITIES WARRANT AGREEMENT (this “*Agreement*”), dated as of _____ between **EIGER BIOPHARMACEUTICALS, INC.**, a Delaware corporation (the “*Company*”), and _____, a [corporation] [national banking association] organized and existing under the laws of _____ and having a corporate trust office in _____, as warrant agent (the “*Warrant Agent*”).

WHEREAS, the Company has entered into an indenture dated as of [_____] (the “*Senior Indenture*”), with _____, as trustee (such trustee, and any successors to such trustee, herein called the “*Senior Trustee*”), providing for the issuance from time to time of its unsubordinated debt securities, to be issued in one or more series as provided in the Senior Indenture (the “*Debt Securities*”); [_____] (the “*Subordinated Indenture*”), with _____, as trustee (such trustee, and any successors to such trustee, herein called the “*Subordinated Trustee*”), providing for the issuance from time to time of its subordinated debt securities, to be issued in one or more series as provided in the Subordinated Indenture (the “*Debt Securities*”);]

WHEREAS, the Company proposes to sell [If Warrants are sold with other securities—title of such other securities being offered (the “*Other Securities*”) with] warrant certificates evidencing one or more warrants (the “*Warrants*” or, individually, a “*Warrant*”) representing the right to purchase [title of Debt Securities purchasable through exercise of Warrants] (the “*Warrant Debt Securities*”), such warrant certificates and other warrant certificates issued pursuant to this Agreement being herein called the “*Warrant Certificates*”; and

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing so to act, in connection with the issuance, registration, transfer, exchange, exercise and replacement of the Warrant Certificates, and in this Agreement wishes to set forth, among other things, the form and provisions of the Warrant Certificates and the terms and conditions on which they may be issued, registered, transferred, exchanged, exercised and replaced.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE 1

ISSUANCE OF WARRANTS AND EXECUTION AND DELIVERY OF WARRANT CERTIFICATES

1.1 Issuance of Warrants. [If Warrants alone—Upon issuance, each Warrant Certificate shall evidence one or more Warrants.] [If Other Securities and Warrants—Warrant Certificates shall be [initially] issued in connection with the issuance of the Other Securities [but shall be separately transferable on and after _____ (the “*Detachable Date*”) [and shall not be separately transferable] and each Warrant Certificate shall evidence one or more Warrants.] Each Warrant evidenced thereby shall represent the right, subject to the provisions contained

herein and therein, to purchase one Warrant Debt Security. [If Other Securities and Warrants—Warrant Certificates shall be initially issued in units with the Other Securities and each Warrant Certificate included in such a unit shall evidence _____ Warrants for each [\$____ principal amount] [____ shares] of Other Securities included in such unit].

1.2 Execution and Delivery of Warrant Certificates. Each Warrant Certificate, whenever issued, shall be in registered form substantially in the form set forth in **Exhibit A** hereto, shall be dated the date of its countersignature by the Warrant Agent and may have such letters, numbers, or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange on which the Warrants may be listed, or to conform to usage. The Warrant Certificates shall be signed on behalf of the Company by any of its present or future chief executive officers, presidents, senior vice presidents, vice presidents, chief financial officers, chief legal officers, treasurers, assistant treasurers, controllers, assistant controllers, secretaries or assistant secretaries under its corporate seal reproduced thereon. Such signatures may be manual or facsimile signatures of such authorized officers and may be imprinted or otherwise reproduced on the Warrant Certificates. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Warrant Certificates.

No Warrant Certificate shall be valid for any purpose, and no Warrant evidenced thereby shall be exercisable, until such Warrant Certificate has been countersigned by the manual signature of the Warrant Agent. Such signature by the Warrant Agent upon any Warrant Certificate executed by the Company shall be conclusive evidence that the Warrant Certificate so countersigned has been duly issued hereunder.

In case any officer of the Company who shall have signed any of the Warrant Certificates either manually or by facsimile signature shall cease to be such officer before the Warrant Certificates so signed shall have been countersigned and delivered by the Warrant Agent, such Warrant Certificates may be countersigned and delivered notwithstanding that the person who signed Warrant Certificates ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Warrant Certificate, shall be the proper officers of the Company, although at the date of the execution of this Agreement any such person was not such officer.

The term “holder” or “holder of a Warrant Certificate” as used herein shall mean any person in whose name at the time any Warrant Certificate shall be registered upon the books to be maintained by the Warrant Agent for that purpose [If Other Securities and Warrants are not immediately detachable—or upon the registration of the Other Securities prior to the Detachable Date. Prior to the Detachable Date, the Company will, or will cause the registrar of the Other Securities to, make available at all times to the Warrant Agent such information as to holders of the Other Securities as may be necessary to keep the Warrant Agent’s records up to date].

1.3 Issuance of Warrant Certificates. Warrant Certificates evidencing the right to purchase Warrant Debt Securities may be executed by the Company and delivered to the Warrant Agent upon the execution of this Warrant Agreement or from time to time thereafter. The Warrant Agent shall, upon receipt of Warrant Certificates duly executed on behalf of the Company, countersign such Warrant Certificates and shall deliver such Warrant Certificates to or upon the order of the Company.

ARTICLE 2

WARRANT PRICE, DURATION AND EXERCISE OF WARRANTS

2.1 Warrant Price. During the period specified in Section 2.2, each Warrant shall, subject to the terms of this Warrant Agreement and the applicable Warrant Certificate, entitle the holder thereof, to purchase the principal amount of Warrant Debt Securities specified in the applicable Warrant Certificate at an exercise price of ____% of the principal amount thereof [plus accrued amortization, if any, of the original issue discount of the Warrant Debt Securities] [plus accrued interest, if any, from the most recent date from which interest shall have been paid on the Warrant Debt Securities or, if no interest shall have been paid on the Warrant Debt Securities, from the date of their initial issuance.] [The original issue discount (\$____ for each \$1,000 principal amount of Warrant Debt Securities) will be amortized at a ____% annual rate, computed on a[n] [semi-] annual basis [using a 360-day year consisting of twelve 30-day months].] Such purchase price for the Warrant Debt Securities is referred to in this Agreement as the “**Warrant Price.**”

2.2 Duration of Warrants. Each Warrant may be exercised in whole or in part at any time, as specified herein, on or after [the date thereof] [_____] and at or before [_____] p.m., [City] time, on _____ or such later date as the Company may designate by notice to the Warrant Agent and the holders of Warrant Certificates mailed to their addresses as set forth in the record books of the Warrant Agent (the “**Expiration Date**”). Each Warrant not exercised at or before [_____] p.m., [City] time, on the Expiration Date shall become void, and all rights of the holder of the Warrant Certificate evidencing such Warrant under this Agreement shall cease.

2.3 Exercise Of Warrants.

(a) During the period specified in Section 2.2, the Warrants may be exercised to purchase a whole number of Warrant Debt Securities in registered form by providing certain information as set forth on the reverse side of the Warrant Certificate and by paying in full, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds] the Warrant Price for each Warrant Debt Security with respect to which a Warrant is being exercised to the Warrant Agent at its corporate trust office, provided that such exercise is subject to receipt within five business days of such payment by the Warrant Agent of the Warrant Certificate with the form of election to purchase Warrant Debt Securities set forth on the reverse side of the Warrant Certificate properly completed and duly executed. The date on which payment in full of the Warrant Price is received by the Warrant Agent shall, subject to receipt of the Warrant Certificate as aforesaid, be deemed to be the date on which the Warrant is exercised;

provided, however, that if, at the date of receipt of such Warrant Certificates and payment in full of the Warrant Price, the transfer books for the Warrant Debt Securities purchasable upon the exercise of such Warrants shall be closed, no such receipt of such Warrant Certificates and no such payment of such Warrant Price shall be effective to constitute the person so designated to be named as the holder of record of such Warrant Debt Securities on such date, but shall be effective to constitute such person as the holder of record of such Warrant Debt Securities for all purposes at the opening of business on the next succeeding day on which the transfer books for the Warrant Debt Securities purchasable upon the exercise of such Warrants shall be opened, and the certificates for the Warrant Debt Securities in respect of which such Warrants are then exercised shall be issuable as of the date on such next succeeding day on which the transfer books shall next be opened, and until such date the Company shall be under no duty to deliver any certificate for such Warrant Debt Securities. The Warrant Agent shall deposit all funds received by it in payment of the Warrant Price in an account of the Company maintained with it and shall advise the Company by telephone at the end of each day on which a payment for the exercise of Warrants is received of the amount so deposited to its account. The Warrant Agent shall promptly confirm such telephone advice to the Company in writing.

(b) The Warrant Agent shall, from time to time, as promptly as practicable, advise the Company of (i) the number of Warrant Debt Securities with respect to which Warrants were exercised, (ii) the instructions of each holder of the Warrant Certificates evidencing such Warrants with respect to delivery of the Warrant Debt Securities to which such holder is entitled upon such exercise, (iii) delivery of Warrant Certificates evidencing the balance, if any, of the Warrants for the remaining Warrant Debt Securities after such exercise, and (iv) such other information as the Company or the [Senior] [Subordinated] Trustee shall reasonably require.

(c) As soon as practicable after the exercise of any Warrant, the Company shall issue, pursuant to the Indenture, in authorized denominations, to or upon the order of the holder of the Warrant Certificate evidencing such Warrant, the Warrant Debt Securities to which such holder is entitled, in fully registered form, registered in such name or names as may be directed by such holder. If fewer than all of the Warrants evidenced by such Warrant Certificate are exercised, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, a new Warrant Certificate evidencing Warrants for the number of Warrant Debt Securities remaining unexercised.

(d) The Company shall not be required to pay any stamp or other tax or other governmental charge required to be paid in connection with any transfer involved in the issue of the Warrant Debt Securities, and in the event that any such transfer is involved, the Company shall not be required to issue or deliver any Warrant Debt Securities until such tax or other charge shall have been paid or it has been established to the Company's satisfaction that no such tax or other charge is due.

(e) Prior to the issuance of any Warrants there shall have been reserved, and the Company shall at all times through the Expiration Date keep reserved, out of its authorized but unissued Warrant Debt Securities, a number of shares sufficient to provide for the exercise of the Warrants.

ARTICLE 3

OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS OF WARRANT CERTIFICATES

3.1 No Rights As Holders of Warrant Debt Securities Conferred By Warrants or Warrant Certificates. No Warrant Certificate or Warrant evidenced thereby shall entitle the holder thereof to any of the rights of a holder of Warrant Debt Securities, including, without limitation, the right to receive the payment of principal of (or premium, if any) or interest, if any, on the Warrant Debt Securities or to enforce any of the covenants in the Indenture.

3.2 Lost, Stolen, Mutilated or Destroyed Warrant Certificates. Upon receipt by the Warrant Agent of evidence reasonably satisfactory to it and the Company of the ownership of and the loss, theft, destruction or mutilation of any Warrant Certificate and/or indemnity reasonably satisfactory to the Warrant Agent and the Company and, in the case of mutilation, upon surrender of the mutilated Warrant Certificate to the Warrant Agent for cancellation, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, in exchange for or in lieu of the lost, stolen, destroyed or mutilated Warrant Certificate, a new Warrant Certificate of the same tenor and evidencing Warrants for a like principal amount of Warrant Debt Securities. Upon the issuance of any new Warrant Certificate under this Section 3.2, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Warrant Agent) in connection therewith. Every substitute Warrant Certificate executed and delivered pursuant to this Section 3.2 in lieu of any lost, stolen or destroyed Warrant Certificate shall represent an additional contractual obligation of the Company, whether or not the lost, stolen or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Section 3.2 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement of mutilated, lost, stolen or destroyed Warrant Certificates.

3.3 Holder Of Warrant Certificate May Enforce Rights. Notwithstanding any of the provisions of this Agreement, any holder of any Warrant Certificate, without the consent of the Warrant Agent, the [Senior] [Subordinated] Trustee, the holder of any Warrant Debt Securities or the holder of any other Warrant Certificate, may, in such holder's own behalf and for such holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such holder's right to exercise the Warrants evidenced by such holder's Warrant Certificate in the manner provided in such holder's Warrant Certificates and in this Agreement.

3.4 Merger, Sale, Conveyance or Lease. In case of (a) any share exchange, merger or similar transaction of the Company with or into another person or entity (other than a share exchange, merger or similar transaction in which the Company is the acquiring or surviving corporation) or (b) the sale, exchange, lease, transfer or other disposition of all or substantially all of the properties and assets of the Company as an entirety (in any such case, a “**Reorganization Event**”), then, as a condition of such Reorganization Event, lawful provisions shall be made, and duly executed documents evidencing the same from the Company’s successor shall be delivered to the holders of the Warrants, so that such successor shall succeed to and be substituted for the Company, and assume all the Company’s obligations under, this Agreement and the Warrants. The Company shall thereupon be relieved of any further obligation hereunder or under the Warrants, and the Company as the predecessor corporation may thereupon or at any time thereafter be dissolved, wound up or liquidated. Such successor or assuming entity thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Warrants issuable hereunder which heretofore shall not have been signed by the Company, and may execute and deliver securities in its own name, in fulfillment of its obligations to deliver Warrant Debt Securities upon exercise of the Warrants. All the Warrants so issued shall in all respects have the same legal rank and benefit under this Agreement as the Warrants theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Warrants had been issued at the date of the execution hereof. In any case of any such Reorganization Event, such changes in phraseology and form (but not in substance) may be made in the Warrants thereafter to be issued as may be appropriate. The Warrant Agent may receive a written opinion of legal counsel as conclusive evidence that any such Reorganization Event complies with the provisions of this Section 3.4.

3.5 Notice To Warrantholders. In case the Company shall (a) effect any Reorganization Event or (b) make any distribution on or in respect of the [title of Warrant Debt Securities] in connection with the dissolution, liquidation or winding up of the Company, then the Company shall mail to each holder of Warrants at such holder’s address as it shall appear on the books of the Warrant Agent, at least ten days prior to the applicable date hereinafter specified, a notice stating the date on which such Reorganization Event, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of [title of Warrant Debt Securities] of record shall be entitled to exchange their shares of [title of Warrant Debt Securities] for securities or other property deliverable upon such Reorganization Event, dissolution, liquidation or winding up. No failure to mail such notice nor any defect therein or in the mailing thereof shall affect any such transaction.

ARTICLE 4

EXCHANGE AND TRANSFER OF WARRANT CERTIFICATES

4.1 Exchange and Transfer of Warrant Certificates. [If Other Securities with Warrants which are immediately detachable—Upon] [If Other Securities with Warrants which are not immediately detachable—Prior to the Detachable Date, a Warrant Certificate may be exchanged or transferred only together with the Other Security to which the Warrant Certificate was initially attached, and only for the purpose of effecting or in conjunction with an exchange or transfer of such Other Security. Prior to any Detachable Date, each transfer of the Other Security shall operate also to transfer the related Warrant Certificates. After the Detachable Date,

upon] surrender at the corporate trust office of the Warrant Agent, Warrant Certificates evidencing Warrants may be exchanged for Warrant Certificates in other denominations evidencing such Warrants or the transfer thereof may be registered in whole or in part; provided that such other Warrant Certificates evidence Warrants for the same aggregate principal amount of Warrant Debt Securities as the Warrant Certificates so surrendered. The Warrant Agent shall keep, at its corporate trust office, books in which, subject to such reasonable regulations as it may prescribe, it shall register Warrant Certificates and exchanges and transfers of outstanding Warrant Certificates, upon surrender of the Warrant Certificates to the Warrant Agent at its corporate trust office for exchange or registration of transfer, properly endorsed or accompanied by appropriate instruments of registration of transfer and written instructions for transfer, all in form satisfactory to the Company and the Warrant Agent. No service charge shall be made for any exchange or registration of transfer of Warrant Certificates, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed in connection with any such exchange or registration of transfer. Whenever any Warrant Certificates are so surrendered for exchange or registration of transfer, an authorized officer of the Warrant Agent shall manually countersign and deliver to the person or persons entitled thereto a Warrant Certificate or Warrant Certificates duly authorized and executed by the Company, as so requested. The Warrant Agent shall not be required to effect any exchange or registration of transfer which will result in the issuance of a Warrant Certificate evidencing a Warrant for a fraction of a Warrant Debt Security or a number of Warrants for a whole number of Warrant Debt Securities and a fraction of a Warrant Debt Security. All Warrant Certificates issued upon any exchange or registration of transfer of Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations and entitled to the same benefits under this Agreement as the Warrant Certificate surrendered for such exchange or registration of transfer.

4.2 Treatment of Holders of Warrant Certificates. [If Other Securities and Warrants are not immediately detachable—Prior to the Detachable Date, the Company, the Warrant Agent and all other persons may treat the owner of the Other Security as the owner of the Warrant Certificates initially attached thereto for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced by such Warrant Certificates, any notice to the contrary notwithstanding. After the Detachable Date and prior to due presentment of a Warrant Certificate for registration of transfer, the] [The] Company, the Warrant Agent and all other persons may treat the registered holder of a Warrant Certificate as the absolute owner thereof for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced thereby, any notice to the contrary notwithstanding.

4.3 Cancellation of Warrant Certificates. Any Warrant Certificate surrendered for exchange, registration of transfer or exercise of the Warrants evidenced thereby shall, if surrendered to the Company, be delivered to the Warrant Agent and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly canceled by the Warrant Agent and shall not be reissued and, except as expressly permitted by this Agreement, no Warrant Certificate shall be issued hereunder in exchange therefor or in lieu thereof. The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of canceled Warrant Certificates in a manner satisfactory to the Company.

ARTICLE 5

CONCERNING THE WARRANT AGENT

5.1 Warrant Agent. The Company hereby appoints _____ as Warrant Agent of the Company in respect of the Warrants and the Warrant Certificates upon the terms and subject to the conditions herein set forth, and _____ hereby accepts such appointment. The Warrant Agent shall have the powers and authority granted to and conferred upon it in the Warrant Certificates and hereby and such further powers and authority to act on behalf of the Company as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Warrant Certificates are subject to and governed by the terms and provisions hereof.

5.2 Conditions of Warrant Agent's Obligations. The Warrant Agent accepts its obligations herein set forth upon the terms and conditions hereof, including the following to all of which the Company agrees and to all of which the rights hereunder of the holders from time to time of the Warrant Certificates shall be subject:

(a) Compensation and Indemnification. The Company agrees promptly to pay the Warrant Agent the compensation to be agreed upon with the Company for all services rendered by the Warrant Agent and to reimburse the Warrant Agent for reasonable out-of-pocket expenses (including reasonable counsel fees) incurred without negligence, bad faith or willful misconduct by the Warrant Agent in connection with the services rendered hereunder by the Warrant Agent. The Company also agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence, bad faith or willful misconduct on the part of the Warrant Agent, arising out of or in connection with its acting as Warrant Agent hereunder, including the reasonable costs and expenses of defending against any claim of such liability.

(b) Agent for the Company. In acting under this Warrant Agreement and in connection with the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligations or relationship of agency or trust for or with any of the holders of Warrant Certificates or beneficial owners of Warrants.

(c) Counsel. The Warrant Agent may consult with counsel satisfactory to it, which may include counsel for the Company, and the written advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the advice of such counsel.

(d) Documents. The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or omitted by it in reliance upon any Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties.

(e) Certain Transactions. The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire any interest in, Warrants, with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as depositary, trustee or agent for, any committee or body of holders of Warrant Debt Securities or other obligations of the Company as freely as if it were not the Warrant Agent hereunder. Nothing in this Warrant Agreement shall be deemed to prevent the Warrant Agent from acting as [Senior] [Subordinated] Trustee under the [Senior] [Subordinated] Indenture.

(f) No Liability for Interest. Unless otherwise agreed with the Company, the Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(g) No Liability for Invalidity. The Warrant Agent shall have no liability with respect to any invalidity of this Agreement or any of the Warrant Certificates (except as to the Warrant Agent's countersignature thereon).

(h) No Responsibility for Representations. The Warrant Agent shall not be responsible for any of the recitals or representations herein or in the Warrant Certificates (except as to the Warrant Agent's countersignature thereon), all of which are made solely by the Company.

(i) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are herein and in the Warrant Certificates specifically set forth and no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a holder of a Warrant Certificate with respect to such default, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or, except as provided in Section 6.2 hereof, to make any demand upon the Company.

5.3 Resignation, Removal and Appointment of Successors.

(a) The Company agrees, for the benefit of the holders from time to time of the Warrant Certificates, that there shall at all times be a Warrant Agent hereunder until all the Warrants have been exercised or are no longer exercisable.

(b) The Warrant Agent may at any time resign as agent by giving written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective; provided that such date shall not be less than three months after the date on which such notice is given unless the Company otherwise agrees. The Warrant

Agent hereunder may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the intended date when it shall become effective. Such resignation or removal shall take effect upon the appointment by the Company, as hereinafter provided, of a successor Warrant Agent (which shall be a bank or trust company authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers) and the acceptance of such appointment by such successor Warrant Agent. The obligation of the Company under Section 5.2(a) shall continue to the extent set forth therein notwithstanding the resignation or removal of the Warrant Agent.

(c) In case at any time the Warrant Agent shall resign, or shall be removed, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or shall commence a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or under any other applicable Federal or state bankruptcy, insolvency or similar law or shall consent to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator (or other similar official) of the Warrant Agent or its property or affairs, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of any such action, or a decree or order for relief by a court having jurisdiction in the premises shall have been entered in respect of the Warrant Agent in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or similar law, or a decree or order by a court having jurisdiction in the premises shall have been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator (or similar official) of the Warrant Agent or of its property or affairs, or any public officer shall take charge or control of the Warrant Agent or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, a successor Warrant Agent, qualified as aforesaid, shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by the successor Warrant Agent of such appointment, the Warrant Agent shall cease to be Warrant Agent hereunder.

(d) Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, trusts, immunities, duties and obligations of such predecessor with like effect as if originally named as Warrant Agent hereunder, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as Warrant Agent hereunder.

(e) Any corporation into which the Warrant Agent hereunder may be merged or converted or any corporation with which the Warrant Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation to which the Warrant Agent shall sell or otherwise transfer all or substantially all the assets and business of the Warrant Agent, provided that it shall be qualified as aforesaid, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE 6

MISCELLANEOUS

6.1 Amendment. This Agreement may be amended by the parties hereto, without the consent of the holder of any Warrant Certificate, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or making any other provisions with respect to matters or questions arising under this Agreement as the Company and the Warrant Agent may deem necessary or desirable; provided that such action shall not materially adversely affect the interests of the holders of the Warrant Certificates.

6.2 Notices and Demands to the Company and Warrant Agent. If the Warrant Agent shall receive any notice or demand addressed to the Company by the holder of a Warrant Certificate pursuant to the provisions of the Warrant Certificates, the Warrant Agent shall promptly forward such notice or demand to the Company.

6.3 Addresses. Any communication from the Company to the Warrant Agent with respect to this Agreement shall be addressed to _____, Attention: _____ and any communication from the Warrant Agent to the Company with respect to this Agreement shall be addressed to Eiger BioPharmaceuticals, Inc., 350 Cambridge Avenue, Suite 350, Palo Alto, CA 94306, Attention: Chief Financial Officer (or such other address as shall be specified in writing by the Warrant Agent or by the Company).

6.4 Governing Law. This Agreement and each Warrant Certificate issued hereunder, and any claim, controversy or dispute arising under or related to this Agreement or any Warrant Certificate, shall be governed by and construed in accordance with the laws of the State of New York.

6.5 Delivery Of Prospectus. The Company shall furnish to the Warrant Agent sufficient copies of a prospectus meeting the requirements of the Securities Act of 1933, as amended, relating to the Warrant Debt Securities deliverable upon exercise of the Warrants (the "**Prospectus**"), and the Warrant Agent agrees that upon the exercise of any Warrant, the Warrant Agent will deliver to the holder of the Warrant Certificate evidencing such Warrant, prior to or concurrently with the delivery of the Warrant Debt Securities issued upon such exercise, a Prospectus. The Warrant Agent shall not, by reason of any such delivery, assume any responsibility for the accuracy or adequacy of such Prospectus.

6.6 Obtaining of Governmental Approvals. The Company will from time to time take all action which may be necessary to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and securities act filings under United States Federal and state laws (including without limitation a registration statement in respect of the Warrants and Warrant Debt Securities under the Securities Act of 1933, as amended), which may be or become requisite in connection with the issuance, sale, transfer, and delivery of the Warrant Debt Securities issued upon exercise of the Warrants, the issuance, sale, transfer and delivery of the Warrants or upon the expiration of the period during which the Warrants are exercisable.

6.7 Persons Having Rights Under Warrant Agreement. Nothing in this Agreement shall give to any person other than the Company, the Warrant Agent and the holders of the Warrant Certificates any right, remedy or claim under or by reason of this Agreement.

6.8 Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

6.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which as so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

6.10 Inspection of Agreement. A copy of this Agreement shall be available at all reasonable times at the principal corporate trust office of the Warrant Agent for inspection by the holder of any Warrant Certificate. The Warrant Agent may require such holder to submit his Warrant Certificate for inspection by it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

EIGER BIOPHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

[WARRANT AGENT], as Warrant Agent

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO DEBT SECURITIES WARRANT AGREEMENT]

EXHIBIT A

**FORM OF WARRANT CERTIFICATE
[FACE OF WARRANT CERTIFICATE]**

[[Form if Warrants are attached to Other Securities and are not immediately detachable.]

[Prior to _____, this Warrant Certificate cannot be transferred or exchanged unless attached to a [Title of Other Securities].]

[Form of Legend if Warrants are not immediately exercisable.]

[Prior to _____, Warrants evidenced by this Warrant Certificate cannot be exercised.]

EXERCISABLE ONLY IF COUNTERSIGNED BY THE WARRANT AGENT AS PROVIDED HEREIN

VOID AFTER [_____] P.M., [_____] TIME, ON _____ ,

EIGER BIOPHARMACEUTICALS, INC.
WARRANT CERTIFICATE REPRESENTING
WARRANTS TO PURCHASE
[TITLE OF WARRANT DEBT SECURITIES]

No. _____

Warrants

This certifies that _____ or registered assigns is the registered owner of the above indicated number of Warrants, each Warrant entitling such owner [If Warrants are attached to Other Securities and are not immediately detachable —, subject to the registered owner qualifying as a “Holder” of this Warrant Certificate, as hereinafter defined)] to purchase, at any time [after [_____] p.m., [City] time, on _____ and] on or before [_____] p.m., [City] time, on _____, \$____ principal amount of [Title of Warrant Debt Securities] (the “**Warrant Debt Securities**”), of Eiger BioPharmaceuticals, Inc. (the “**Company**”), issued or to be issued under the Indenture (as hereinafter defined), on the following basis: during the period from _____, through and including _____, each Warrant shall entitle the Holder thereof, subject to the provisions of this Agreement, to purchase the principal amount of Warrant Debt Securities stated in the Warrant Certificate at the warrant price (the “**Warrant Price**”) of ____% of the principal amount thereof [plus accrued amortization, if any, of the original issue discount of the Warrant Debt Securities] [plus accrued interest, if any, from the most recent date from which interest shall have been paid on the Warrant Debt Securities or, if no interest shall have been paid on the Warrant Debt Securities, from the date of their original issuance]. [The original issue discount (\$____ for each \$1,000 principal amount of Warrant Debt Securities) will be amortized at a ____% annual rate, computed on a[n] [semi-]annual basis [using a 360-day year consisting of twelve 30-day months]. The Holder may exercise the Warrants evidenced hereby by providing certain information set forth on the back hereof and by paying in full, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], the Warrant Price for each Warrant Debt Security with respect to which this Warrant is exercised to the Warrant Agent (as hereinafter defined) and by surrendering this Warrant Certificate, with the purchase form on the back hereof duly executed, at the corporate trust office of [name of Warrant Agent], or its successor as warrant agent (the “**Warrant Agent**”), which is, on the date hereof, at the address specified on the reverse hereof, and upon compliance with and subject to the conditions set forth herein and in the Warrant Agreement (as hereinafter defined).

The term “Holder” as used herein shall mean [If Warrants are attached to Other Securities and are not immediately detachable—, prior to _____, _____ (the “**Detachable Date**”), the registered owner of the Company’s [title of Other Securities] to which this Warrant Certificate was initially attached, and after such Detachable Date,] the person in whose name at the time this Warrant Certificate shall be registered upon the books to be maintained by the Warrant Agent for that purpose pursuant to Section 4 of the Warrant Agreement.

The Warrants evidenced by this Warrant Certificate may be exercised to purchase Warrant Debt Securities in the principal amount of \$1,000 or any integral multiple thereof in registered form. Upon any exercise of fewer than all of the Warrants evidenced by this Warrant Certificate, there shall be issued to the Holder hereof a new Warrant Certificate evidencing Warrants for the aggregate principal amount of Warrant Debt Securities remaining unexercised.

This Warrant Certificate is issued under and in accordance with the Warrant Agreement dated as of _____, _____ (the "**Warrant Agreement**"), between the Company and the Warrant Agent and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof. Copies of the Warrant Agreement are on file at the above-mentioned office of the Warrant Agent.

The Warrant Debt Securities to be issued and delivered upon the exercise of Warrants evidenced by this Warrant Certificate will be issued under and in accordance with an Indenture, [dated as of _____, _____ (the "**Senior Indenture**"), between the Company and _____, as trustee (such trustee, and any successors to such trustee, the "**Senior Trustee**") [dated as of _____, _____, (the "**Subordinated Indenture**"), between the Company and _____, as trustee (such trustee, and any successors to such trustee, the "**Subordinated Trustee**")]] and will be subject to the terms and provisions contained in the Warrant Debt Securities and in the Indenture. Copies of the [Senior] [Subordinated] Indenture, including the form of the Warrant Debt Securities, are on file at the corporate trust office of the Trustee.

[If Warrants are attached to Other Securities and are not immediately detachable—Prior to the Detachable Date, this Warrant Certificate may be exchanged or transferred only together with the [Title of Other Securities] (the "**Other Securities**") to which this Warrant Certificate was initially attached, and only for the purpose of effecting or in conjunction with, an exchange or transfer of such Other Security. Additionally, on or prior to the Detachable Date, each transfer of such Other Security on the register of the Other Securities shall operate also to transfer this Warrant Certificate. After such date, transfer of this] [If Warrants are attached to Other Securities and are immediately detachable—Transfer of this] Warrant Certificate may be registered when this Warrant Certificate is surrendered at the corporate trust office of the Warrant Agent by the registered owner or such owner's assigns, in the manner and subject to the limitations provided in the Warrant Agreement.

[If Other Securities with Warrants which are not immediately detachable—Except as provided in the immediately preceding paragraph, after] [If Other Securities with Warrants which are immediately detachable or Warrants alone—After] countersignature by the Warrant Agent and prior to the expiration of this Warrant Certificate, this Warrant Certificate may be exchanged at the corporate trust office of the Warrant Agent for Warrant Certificates representing Warrants for the same aggregate principal amount of Warrant Debt Securities.

This Warrant Certificate shall not entitle the Holder hereof to any of the rights of a holder of the Warrant Debt Securities, including, without limitation, the right to receive payments of principal of (and premium, if any) or interest, if any, on the Warrant Debt Securities or to enforce any of the covenants of the Indenture.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Warrant Certificate shall not be valid or obligatory for any purpose until countersigned by the Warrant Agent.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed in its name and on its behalf by the facsimile signatures of its duly authorized officers.

Dated: _____

EIGER BIOPHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Countersigned:

[WARRANT AGENT], as Warrant Agent

By: _____

Name: _____

Title: _____

[REVERSE OF WARRANT CERTIFICATE]

(Instructions for Exercise of Warrant)

To exercise any Warrants evidenced hereby for Warrant Debt Securities (as hereinafter defined), the Holder must pay, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], the Warrant Price in full for Warrants exercised, to [Warrant Agent] [address of Warrant Agent], Attn: , which payment must specify the name of the Holder and the number of Warrants exercised by such Holder. In addition, the Holder must complete the information required below and present this Warrant Certificate in person or by mail (certified or registered mail is recommended) to the Warrant Agent at the appropriate address set forth above. This Warrant Certificate, completed and duly executed, must be received by the Warrant Agent within five business days of the payment.

(To be executed upon exercise of Warrants)

The undersigned hereby irrevocably elects to exercise _____ Warrants, represented by this Warrant Certificate, to purchase \$____ principal amount of the [Title of Warrant Debt Securities] (the "**Warrant Debt Securities**") of Eiger BioPharmaceuticals, Inc. and represents that he has tendered payment for such Warrant Debt Securities, in lawful money of the United States of America, [in cash or by certified check or official bank check in New York Clearing House funds] [by bank wire transfer in immediately available funds], to the order of Eiger BioPharmaceuticals, Inc., c/o [insert name and address of Warrant Agent], in the amount of \$____ in accordance with the terms hereof. The undersigned requests that said principal amount of Warrant Debt Securities be in fully registered form in the authorized denominations, registered in such names and delivered all as specified in accordance with the instructions set forth below.

If the number of Warrants exercised is less than all the Warrants evidenced hereby, the undersigned requests that a new Warrant Certificate evidencing the Warrants for the aggregate principal amount of Warrant Debt Securities remaining unexercised be issued and delivered to the undersigned unless otherwise specified in the instructions below.

Dated _____

Name _____

Please Print _____

Address: _____

(Insert Social Security or Other Identifying Number of Holder)

Signature Guaranteed

Signature

(Signature must conform in all respects to name of holder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a FINRA member firm).

This Warrant may be exercised at the following addresses:

By hand at

By mail at

[Instructions as to form and delivery of Warrant Debt Securities and, if applicable, Warrant Certificates evidencing Warrants for the number of Warrant Debt Securities remaining unexercised—complete as appropriate.]

ASSIGNMENT

[Form of assignment to be executed if Warrant Holder desires to transfer Warrant]

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto:

(Please print name and address including zip code)

Please print Social Security or other identifying number

the right represented by the within Warrant to purchase \$ _____ aggregate principal amount of [Title of Warrant Debt Securities] of Eiger BioPharmaceuticals, Inc. to which the within Warrant relates and appoints attorney to transfer such right on the books of the Warrant Agent with full power of substitution in the premises.

Dated _____

Signature _____

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Signature Guaranteed



Glen Sato
+1 650 843 5502
gsato@cooley.com

June 17, 2016

Eiger BioPharmaceuticals, Inc.
350 Cambridge Ave., Suite 350
Palo Alto, CA 94306

Re: Registration on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "**Company**"), in connection with the filing of a Registration Statement on Form S-3 (the "**Registration Statement**") by the Company under the Securities Act of 1933, as amended (the "**Securities Act**"). The Company has provided us with two prospectuses, which form part of the Registration Statement: (i) a base prospectus (the "**Base Prospectus**"); and (ii) a sales agreement prospectus (the "**Sales Agreement Prospectus**"), covering the offering, issuance and sale of up to \$25,000,000 of shares of common stock, par value \$0.001 per share, of the Company ("**Common Stock**") that may be issued and sold under the Sales Agreement, dated June 17, 2016, between the Company and Cantor Fitzgerald & Co. (such agreement, the "**Sales Agreement**", and such shares, the "**Sales Agreement Shares**"). The Base Prospectus provides that it will be supplemented in the future by one or more prospectus supplements (each, a "**Prospectus Supplement**"). The Registration Statement, including the Base Prospectus (as supplemented from time to time by one or more Prospectus Supplements) and the Sales Agreement Prospectus provide for the registration by the Company of:

- the resale of 157,587 shares of Common Stock held by the selling stockholder as described in the Base Prospectus (the "**Resale Shares**");
- shares of Common Stock issuable pursuant to the Base Prospectus (as supplemented from time to time by one or more Prospectus Supplements) (the "**Base Prospectus Shares**");
- shares of preferred stock, in one or more series, par value \$0.001 per share, of the Company (the "**Preferred Stock**") issuable pursuant to the Base Prospectus (as supplemented from time to time by one or more Prospectus Supplements);
- debt securities, in one or more series (the "**Debt Securities**"), which may be issued pursuant to an indenture to be dated on or about the date of the first issuance of Debt Securities thereunder, by and between a trustee to be selected by the Company (the "**Trustee**") and the Company, in the form filed as Exhibit 4.3 to the Registration Statement (the "**Indenture**") issuable pursuant to the Base Prospectus (as supplemented from time to time by one or more Prospectus Supplements);

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- warrants issuable pursuant to the Base Prospectus (as supplemented from time to time by one or more Prospectus Supplements) to purchase Common Stock, Preferred Stock, or Debt Securities (the “**Warrants**”), which may be issued under warrant agreements, to be dated on or about the date of the first issuance of the applicable Warrants thereunder, by and between a warrant agent to be selected by the Company (the “**Warrant Agent**”) and the Company, in the forms filed as Exhibits 4.5, 4.6 and 4.7 to the Registration Statement (each, a “**Warrant Agreement**”); and
- the Sales Agreement Shares;

The Resales Shares, Base Prospectus Shares, the Preferred Stock, the Debt Securities, the Warrants and the Sales Agreement Shares are collectively referred to herein as the “**Securities**.” The Securities are being registered for offer and sale from time to time pursuant to Rule 415 under the Securities Act. The aggregate public offering price of the Securities being registered by the Company is \$125,000,000.

In connection with this opinion, we have examined and relied upon originals, or copies certified to our satisfaction, of such records, documents, certificates, opinions, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

In rendering this opinion, we have assumed the genuineness and authenticity of all signatures on original documents; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents where authorization, execution and delivery are prerequisites to the effectiveness of such documents.

With respect to our opinion as to the Base Prospectus Shares, we have assumed that, at the time of issuance and sale, a sufficient number of shares of Common Stock is authorized and available for issuance and that the consideration for the issuance and sale of the Base Prospectus Shares (or Preferred Stock or Debt Securities convertible into Common Stock or Warrants exercisable for Common Stock) is in an amount that is not less than the par value of the Common Stock. With respect to our opinion as to the Preferred Stock, we have assumed that, at the time of issuance and sale, a sufficient number of shares of Preferred Stock is authorized, designated and available for issuance and that the consideration for the issuance and sale of the Preferred Stock (or Debt Securities convertible into Preferred Stock or Warrants exercisable for Preferred Stock) is in an amount that is not less than the par value of the Preferred Stock. We have also assumed that any Debt Securities or Warrants, as the case may be, offered under the Registration Statement, and the related Indenture or Warrant Agreement, as applicable, will be executed in the forms filed as exhibits to the Registration Statement or incorporated by reference therein. We have also assumed that (i) with respect to Securities being issued upon conversion of any convertible Preferred Stock, the applicable convertible

Preferred Stock will be duly authorized, validly issued, fully paid and nonassessable; and (ii) with respect to any Securities being issued upon conversion of any convertible Debt Securities or upon exercise of any Warrants, the applicable convertible Debt Securities or Warrants will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights, and subject to general equity principles and to limitations on availability of equitable relief, including specific performance. With respect to our opinion as to the Sales Agreement Shares, we have assumed that, upon the issuance of any of the Sales Agreement Shares, the total number of shares of Common Stock issued and outstanding and committed to be issued will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under its Amended and Restated Certificate of Incorporation as it is then in effect and that the proceeds from the sale of each of the Sales Agreement Shares will be equal to at least its par value.

Our opinion herein is expressed solely with respect to the federal laws of the United States, the General Corporation Law of the State of Delaware ("**DGCL**") and, as to the Debt Securities and the Warrants constituting valid and legally binding obligations of the Company, with respect to the laws of the State of New York and the DGCL. Our opinion is based on these laws as in effect on the date hereof. We express no opinion as to any provision of the Debt Securities that: (a) relates to the subject matter jurisdiction of any federal court of the United States of America or any federal appellate court to adjudicate any controversy related to the Debt Securities or (b) contains a waiver of an inconvenient forum. We are not rendering any opinion as to compliance with any federal or state law, rule or regulation relating to securities, or to the sale or issuance thereof.

On the basis of the foregoing and in reliance thereon, and subject to the qualifications herein stated, we are of the opinion that:

1. The Resale Shares have been validly issued and are fully paid and nonassessable.
2. With respect to the Base Prospectus Shares offered under the Registration Statement, provided that: (i) the Registration Statement and any required post-effective amendment thereto have all become effective under the Securities Act and the Base Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (ii) the issuance of the Base Prospectus Shares has been duly authorized by all necessary corporate action on the part of the Company, including approval of each issuance by the Company's board of directors or a duly authorized committee thereof; (iii) the issuance and sale of the Base Prospectus Shares do not violate any applicable law, are in conformity with the Company's then operative certificate of incorporation (the "**Certificate of Incorporation**") and bylaws (the "**Bylaws**"), do not result in a default under or breach of any agreement or instrument binding upon the Company and comply with any applicable requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (iv) the certificates for the Base Prospectus Shares have been duly executed by the Company, countersigned by the transfer agent therefor and duly delivered to the purchasers thereof against payment therefor, then the Base Prospectus Shares, when issued and sold as contemplated in the Registration Statement, the Base Prospectus and the related

Prospectus Supplement(s), and in accordance with a duly authorized, executed and delivered purchase, underwriting or similar agreement, or upon conversion of any convertible Preferred Stock, or convertible Debt Securities in accordance with their terms, or upon exercise of any Warrants in accordance with their terms, will be duly authorized, validly issued, fully paid and nonassessable.

3. With respect to the Preferred Stock offered under the Registration Statement, provided that: (i) the Registration Statement and any required post-effective amendment thereto have all become effective under the Securities Act and the Base Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (ii) the terms and issuance of the Preferred Stock have been duly authorized by all necessary corporate action on the part of the Company, including approval of each issuance by the Company's board of directors or a duly authorized committee thereof; (iii) the terms of the shares of Preferred Stock and their issuance and sale do not violate any applicable law, are in conformity with the Certificate of Incorporation and Bylaws, do not result in a default under or breach of any agreement or instrument binding upon the Company and comply with any applicable requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (iv) the certificates for the Preferred Stock have been duly executed by the Company, countersigned by the transfer agent therefor and duly delivered to the purchasers thereof against payment therefor, then the Preferred Stock, when issued and sold as contemplated in the Registration Statement, the Base Prospectus and the related Prospectus Supplement(s) and in accordance with any applicable duly authorized, executed and delivered purchase, underwriting or similar agreement, or upon conversion of any convertible Debt Securities in accordance with their terms, or upon exercise of any Warrants in accordance with their terms, will be duly authorized, validly issued, fully paid and nonassessable.

4. With respect to any series of the Debt Securities issued under the Indenture and offered under the Registration Statement, provided that: (i) the Registration Statement and any required post-effective amendment thereto have all become effective under the Securities Act and the Base Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (ii) the Indenture has been duly authorized by the Company and the Trustee by all necessary corporate action; (iii) the Indenture in substantially the form filed as an exhibit to the Registration Statement, has been duly executed and delivered by the Company and the Trustee; (iv) the issuance and terms of the Debt Securities have been duly authorized by the Company by all necessary corporate action; (v) the terms of the Debt Securities and of their issuance and sale have been duly established in conformity with the Indenture so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company, so as to be in conformity with the Certificate of Incorporation and Bylaws, and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (vi) the Debt Securities have been duly executed and delivered by the Company and authenticated by the Trustee pursuant to the Indenture and delivered against payment therefor, then the Debt Securities, when issued and sold in accordance with the Indenture and a duly authorized, executed and delivered purchase, underwriting or similar agreement, or upon exercise of any Warrants under the Warrant Agreement, will be valid and legally binding

obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally, and by general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity).

5. With respect to the Warrants issued under the Warrant Agreements and offered under the Registration Statement, provided that (i) the Registration Statement and any required post-effective amendment thereto have all become effective under the Securities Act and the Base Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (ii) any applicable Warrant Agreement has been duly authorized by the Company and the Warrant Agent by all necessary corporate action; (iii) any applicable Warrant Agreement has been duly executed and delivered by the Company and the Warrant Agent and the terms of the Warrant Agreement have been established in accordance with applicable law; (iv) the issuance and terms of the Warrants have been duly authorized by the Company by all necessary corporate action; (v) the terms of the Warrants and of their issuance and sale have been duly established in conformity with any applicable Warrant Agreement and as described in the Registration Statement, the Base Prospectus and the related Prospectus Supplement(s), so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company, so as to be in conformity with the Certificate of Incorporation and Bylaws, and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (vi) the Warrants have been duly executed and delivered by the Company and authenticated by the Warrant Agent pursuant to any applicable Warrant Agreement and delivered against payment therefor, then the Warrants, when issued and sold as contemplated in the Registration Statement, the Base Prospectus and the Prospectus Supplement(s) and in accordance with the applicable Warrant Agreement and a duly authorized, executed and delivered purchase, underwriting or similar agreement, will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally, and by general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity)

6. With respect to the Sales Agreement Shares, the Sales Agreement Shares have been duly authorized and, subject to approval of each issuance by the Company's board of directors or a duly authorized committee thereof, when sold and issued against payment therefor in accordance with the terms of the Sales Agreement, the Registration Statement and the Sales Agreement Prospectus, will be validly issued, fully paid and nonassessable.



June 17, 2016

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We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the prospectuses included in the Registration Statement. This opinion is expressed as of the date hereof, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable law.

Sincerely,

Cooley LLP

By: /s/ Glen Sato

Glen Sato

COOLEY LLP 3175 HANOVER STREET PALO ALTO, CA 94304-1130 T: (650) 843-5000 F: (650) 849-7400 COOLEY.COM

LICENSE AGREEMENT

between

EIGER BIOPHARMACEUTICALS, INC.

and

BRISTOL-MYERS SQUIBB COMPANY

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made and entered into as of the date last signed by a party below (the "Effective Date"), by and between **Bristol-Myers Squibb Company**, a Delaware corporation headquartered at 345 Park Avenue, New York, New York 10154 ("BMS"), and **Eiger BioPharmaceuticals, Inc.**, a Delaware corporation, with offices at 350 Cambridge Ave, Suite 350, Palo Alto, CA 94306 ("Eiger"). BMS and Eiger are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, BMS and its Affiliates Control (as defined below) certain patent rights and know-how rights with respect to the Licensed Compounds (as defined below); and

WHEREAS, Eiger desires to obtain from BMS the licenses set forth herein, and BMS desires to grant such licenses to Eiger, all on the terms and conditions set forth in this Agreement;

NOW, THEREFORE in consideration of the foregoing and the mutual agreements set forth below, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

The terms in this Agreement with initial letters capitalized, whether used in the singular or the plural, shall have the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

1.1 "Act" means the United States Food, Drug and Cosmetic Act, as amended.

1.2 "Affiliate" of a Person means any other Person which (directly or indirectly) is controlled by, controls or is under common control with such Person. For the purposes of this definition, the term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to a Person, shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and "control" shall be presumed to exist if either of the following conditions is met: (i) in the case of a corporate entity, direct or indirect ownership of voting securities entitled to cast at least fifty percent (50%) of the votes in the election of directors or (ii) in the case of a non-corporate entity, direct or indirect ownership of at least fifty percent (50%) of the equity interests with the power to direct the management and policies of such entity.

1.3 "Approval" means, with respect to any Licensed Product in any regulatory jurisdiction, approval from the applicable Regulatory Authority sufficient for the manufacture,

distribution, use, marketing, and sale of the Licensed Product in such jurisdiction in accordance with applicable Laws; provided, however that for purposes of the U.S., Approval means BLA Approval and for purposes of the EU, Approval means MAA Approval.

1.4 “BLA” means a biologics license application for a new biologics drug filed with the FDA required for marketing approval for the applicable Licensed Product in the U.S.

1.5 “BLA Approval” means the final approval of a BLA for a given indication by the FDA for the applicable Licensed Product in the U.S.; provided, that, for milestone payment purposes, BLA Approval shall in any event be deemed achieved upon First Commercial Sale in the U.S. for such indication.

1.6 “BLA Filing” means the acceptance by the FDA of the filing of a BLA for the applicable Licensed Product.

1.7 “BMS Know-How” means Know-How that, as of the Effective Date, is Controlled by BMS and directly relates to and is reasonably necessary for, Eiger’s Development and Commercialization of the Licensed Compounds and/or Licensed Products in the Field or is used by BMS to manufacture the Licensed Compounds as manufactured by BMS as of the Effective Date.

1.8 “BMS Patent Rights” means (a) the patents and patent applications listed in Appendix 1, (b) all divisionals, continuations, continuations-in-part thereof (excluding claims in continuations-in-part that necessarily rely on new matter invented by BMS after the Effective Date) or any other patent application claiming priority directly or indirectly to (i) any of the patents or patent applications in subsection (a), or (ii) any patent or patent application from which the patents or patent applications in (a) claim direct or indirect priority, (c) all patents issuing on any of the foregoing in (a) and (b), (d) all foreign counterparts of any of the foregoing in (a) through(c), including any patent applications filed under the Patent Cooperation Treaty (“PCT Applications”), and (e) all registrations, reissues, re-examinations, supplemental protection certificates, or extensions of any of the foregoing in (a) through (d). BMS Patent Rights in clause (a) above shall also include any claims in any patents or patent applications existing as of the Effective Date that are Controlled by BMS and cover the composition of matter of any intermediate or starting material reasonably necessary in or reasonably useful for the manufacture of any Licensed Compound as manufactured by BMS as of the Effective Date. BMS Patent Rights do not include any claims covering the composition of matter, manufacture or method of use of only a compound other than (i) a Licensed Compound or (ii) an intermediate or starting material reasonably necessary in or reasonably useful for the manufacture of any Licensed Compound as manufactured by BMS as of the Effective Date.

1.9 “Business Day” or “business day” means a day other than Saturday, Sunday or any day on which commercial banks located in New York, New York are authorized or obligated by Law to close.

1.10 “Calendar Quarter” means the respective periods of three consecutive calendar months ending on March 31, June 30, September 30 and December 31.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

1.11 “Calendar Year” means each one-year period commencing on January 1 and ending on December 31.

1.12 “Clinical Trial” means any human clinical study of a pharmaceutical product.

1.13 “Combination Product” means a Licensed Product that includes at least one additional active ingredient other than the Licensed Compound. Drug delivery vehicles, adjuvants, and excipients shall not be deemed to be “active ingredients”, except in the case where such delivery vehicle, adjuvant, or excipient is recognized by the FDA as an active ingredient in accordance with 21 CFR 210.3(b)(7).

1.14 “Commercialization” or “Commercialize” means activities directed to commercially manufacturing, obtaining pricing and reimbursement approvals including regulatory activities relating to same, marketing, promoting, distributing, importing or selling a Licensed Product.

1.15 “Commercially Reasonable Efforts” means,

(a) with respect to the efforts to be expended by Eiger with respect to any objective, activity or decision to be undertaken under this Agreement, those efforts that a company within the bio-pharmaceutical industry of comparable size and resources [*] would reasonably use to accomplish such objective, activity or decision, and specifically means the carrying out of Development and Commercialization activities using efforts that a company within the bio-pharmaceutical industry of comparable size and resources [*] would reasonably devote to a product at a similar stage in its development or product life and of similar market potential, profit potential, based on conditions then prevailing and taking into account efficacy, safety, intellectual property protection, approved labeling, the competitiveness of alternative products sold by Third Parties in the marketplace, the patent and other proprietary position of the product, and the likelihood of regulatory approval given the regulatory structure involved. Commercially Reasonable Efforts shall be determined on a Major Markets Countries-by-Major Markets Countries basis for the Licensed Product, and it is anticipated that the level of effort will change over time, reflecting changes in the status of the Licensed Product and the Major Market(s) Country(ies) involved. Without limiting the foregoing, Commercially Reasonable Efforts require that Eiger: (i) promptly assign responsibility for such Development and Commercialization activities to specific individuals who are held accountable for progress and monitor such progress on an on-going basis, (ii) set and consistently seek to achieve specific and meaningful objectives and timelines for carrying out such Development and Commercialization activities, and (iii) consistently make and implement decisions and allocate resources designed to advance progress with respect to such objectives and timelines.

(b) with respect to the efforts to be expended by BMS with respect to any objective, activity or decision to be undertaken under this Agreement, those efforts consistent with the commercially reasonable practices normally devoted by BMS.

1.16 “Competitive Compound” means [*].

- 3 -

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

1.17 “Confidential Information” means all trade secrets, processes, formulae, data, Know-How, improvements, inventions, chemical or biological materials, techniques, marketing plans, strategies, customer lists, or other information (including all information and materials of a Party’s customers and any other Third Party and their consultants) that has been disclosed by a Party to the other Party under this Agreement or that certain Confidential Disclose Agreement between the Parties, dated May 13, 2015 (the “CDA”), regardless of whether any of the foregoing are marked “confidential” or “proprietary” or communicated to the other by the disclosing Party in oral, written, graphic, or electronic form. “Confidential Information” of BMS shall include the BMS Know-How.

1.18 “Controlled” or “Controls”, when used in reference to intellectual property right or other intangible rights, shall mean the legal authority or right of a Party (or any of its Affiliates) to grant a license or sublicense of intellectual property rights to the other Party or any Third Party, or to otherwise disclose confidential, proprietary or trade secret information to such other Party or to any Third Party, without breaching the terms of any agreement with any Third Party.

1.19 “Development” means non-clinical and clinical drug development activities reasonably related to the development and submission of information to a Regulatory Authority, including toxicology, pharmacology and other discovery and pre-clinical efforts, test method development and stability testing, process development, formulation development, development manufacturing, delivery system development, quality assurance and quality control development, statistical analysis, clinical studies (including pre- and post-Approval studies but specifically excluding regulatory activities directed to obtaining pricing and reimbursement approvals), and post-marketing commitments/requirements. When used as a verb, “Develop” means to engage in Development.

1.20 “Development Plan” means, with respect to a Licensed Product, a plan and related timing estimates prepared by Eiger for the then current calendar year and the two (2) following years (or through first BLA or MAA filing if later) setting forth a summary of the Development activities to be conducted for such Licensed Product in all Major Market Countries, including the indications expected to be targeted, a good faith estimate of reasonable timelines for completing key Development activities and filing of key regulatory submissions (including estimated timelines for commencement of each stage of clinical Development), and including, where known, the primary endpoints and any comparator or agents to be used in combination with a Licensed Compound/Licensed Product for any such studies and any go/no-go decision criteria for any such studies. The initial Development Plan as of the Effective Date is attached hereto as Appendix 2. A copy of the study protocol for a given study will be provided to BMS if available and if requested by BMS.

1.21 “Distributor” means, with respect to a country, any Third Party that is used by pharmaceutical manufacturers generally in such country on a non-exclusive basis (and without any grant or license by Eiger of any intellectual property rights) to sell and distribute finished, packaged pharmaceutical products to pharmacies, managed care organizations, governmental agencies (*e.g.*, federal, state and local), and other group purchasing organizations (*e.g.*, pharmaceutical benefits managers) and the like in such country; provided, that Eiger shall be

permitted to grant or license such intellectual property rights to the Third Party solely to the extent reasonably necessary to comply with applicable law or to enable such distributor to sell and distribute (but not to market or promote) a Licensed Product. For clarity, a Distributor of a Licensed Product in a country shall not include any person or entity that has been granted a right, whether by license or otherwise and whether express or implied (including by subcontract or agency), by a Party or its Affiliates to research, Develop or manufacture (but a Distributor may have the right to repackage or relabel finished product specifically for sale or distribution in such country) any such Licensed Product or that otherwise assumes any regulatory or other responsibilities with respect to obtaining or maintaining regulatory approvals for such Licensed Product in such country.

1.22 “Dollar” or “\$” means the lawful currency of the United States.

1.23 “EMA” means the European Medicines Agency, or any successor agency thereto.

1.24 “EU” means the European Union, as its membership may be altered from time to time, and any successor thereto.

1.25 “FDA” means the U.S. Food and Drug Administration, or any successor agency thereto.

1.26 “Field” means all therapeutic and diagnostic uses in humans and animals, including the prevention, treatment or control of any disease, disorder or condition.

1.27 “First Commercial Sale” means, with respect to any Licensed Product in a country in the Territory, the first sale for use or consumption by the general public of such Licensed Product in such country after Approval of such Licensed Product has been granted, or such marketing and sale is otherwise permitted, by the Regulatory Authority of such country.

1.28 “GAAP” means United States generally accepted accounting principles, consistently applied.

1.29 “Governmental Authority” means any multi-national, national, federal, state, local, municipal, provincial, county, or other political subdivision, agency or other body, domestic or foreign or other government authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, court, tribunal or other entity).

1.30 “IND” means an Investigational New Drug Application, as defined in the Act, filed with the FDA or its foreign counterparts, including as applicable clinical trial applications (“CTAs”), clinical trial exemptions (“CTXs”) and investigational medicinal product dossiers.

1.31 “Initiation” means, when used with respect to a Clinical Trial, the dosing of the first patient with the first dose in such Clinical Trial.

1.32 “Know-How” means tangible and intangible information, techniques, technology, practices, inventions (whether patentable or not), methods, knowledge, trade secrets, data and

results (including all biological, chemical, pharmacological, toxicological, clinical, analytical and quality control data and methods (including any applicable reference standards), manufacturing assay and related data, manufacturing and formulation processes, data and results relating to drug substance, drug product, starting materials, and radiolabeled compounds, know-how and trade secrets).

1.33 “Knowledge” means, with respect to BMS, the actual knowledge of the individuals listed on Appendix 9 hereto, based on such individuals’ good faith understanding of the facts and information in their possession or control without any duty to conduct any additional investigation within such individual’s scope of responsibility with respect to such facts and information.

1.34 “Laws” means all applicable laws, statutes, rules, regulations and other pronouncements having the effect of law of any Governmental Authority that may be in effect from time to time, including for clarity any applicable rules, regulations and other requirements of any Regulatory Authority that may be in effect from time to time.

1.35 “Licensed Compound” means (i) the proprietary BMS molecule known as PEG-interferon Lambda-1a having chemical structure set forth in Appendix 3, [*], as well as (ii) [*], (iii) [*], and (iv) [*].

1.36 “Licensed Product” means any pharmaceutical product containing a Licensed Compound (alone or with other active ingredients Controlled by Eiger), in all forms, presentations, formulations and dosage forms. For clarity, “other active ingredients” does not include any other active ingredients or molecules that are proprietary to, or Controlled by, BMS and its Affiliates and would require a license from BMS with respect to the composition, method of use or manufacture of such other molecule, unless separately licensed from BMS or its Affiliates (with BMS and its Affiliates having no obligation, express or implied, to do so).

1.37 “MAA” means a marketing authorization application filed for Approval in the EU of the applicable Licensed Product.

1.38 “MAA Approval” means Approval by the EMA of a MAA filed with the EMA for the applicable Licensed Product under the centralized European procedure. If the centralized EMA filing procedure is not used, MAA Approval shall be achieved upon the first Approval for the applicable Licensed Product in three of the following countries: France, Germany, Italy, Spain and the United Kingdom. For clarity, MAA Approval shall include any pricing and reimbursement approvals required prior to sale of such Licensed Product in the European Union, or in connection with Approvals achieved in three of the foregoing five European Union member states; provided, that MAA Approval shall in any event be deemed achieved upon First Commercial Sale in any country in the European Union.

1.39 “MAA Filing” means the validation by the EMA of a centralized filing of an MAA for the applicable Licensed Product.

1.40 “Major Market Countries” means the following countries: [*]. “Major Market Country” means any one of these countries.

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1.41 “**Net Sales**” means, with respect to any Licensed Product, the gross amount invoiced in arm’s-length transactions by a Party, an Affiliate of such Party, or any permitted Sublicensee (or such Sublicensee’s Affiliates) (all of the foregoing persons and entities, for purposes of this definition and Sections 8.4, 8.6, and 8.7), shall be considered a “**Related Party**”) for sales of such Licensed Product to a Third Party, less the sum of the following (to the extent not reimbursed by any Third Party):

(a) discounts (including cash discounts and quantity discounts), cash and non-cash coupons, retroactive price reductions, charge-back payments and rebates granted to managed care organizations or to federal, state and local governments, their agencies, and purchasers and reimbursers or to customers;

(b) credits or allowances actually granted upon claims, damaged goods, rejections or returns (including inventory management fees) of such Licensed Product, including Licensed Product returned in connection with recalls or withdrawals;

(c) amounts written off by reason of uncollectible debts;

(d) freight, postage, shipping, transportation and insurance charges for the delivery of the Licensed Product; and

(e) taxes or duties levied on, absorbed or otherwise imposed on sale of the Licensed Product, including value-added taxes, healthcare taxes or other governmental charges otherwise imposed upon the billed amount (to the extent not paid by the Third Party), as adjusted for rebates and refunds, in each case as accounted for by the party recording such Net Sales.

No deduction shall be made for any item of cost incurred by any Related Party in Developing or Commercializing Licensed Products except as permitted pursuant to clauses (a) to (d) of the foregoing sentence; provided that, Licensed Products transferred to Third Parties in connection with clinical and non-clinical research and trials, Licensed Product samples, compassionate sales or use, or an indigent program or for similar bona fide business purposes in accordance with applicable local laws and regulations in which a Related Party agrees to forego a normal profit margin for good faith business shall give rise to Net Sales only to the extent that any Related Party invoices or receives amounts therefor exceeding the cost of goods.

Such amounts shall be determined consistent with a Related Party’s customary practices and in accordance with GAAP.

It is understood that any accruals for individual items reflected in Net Sales are periodically [*] trued up and adjusted by each Related Party consistent with its customary practices and in accordance with GAAP.

Sale or transfer of Licensed Products between any of the Related Parties shall not result in any Net Sales, with Net Sales to be based only on any subsequent sales or dispositions to a non-Related Party. To the extent that any Related Party receives consideration other than or in addition to cash upon the sale or disposition of a Licensed Product to a non-Related Party, Net Sales shall be calculated based on the average price charged for such Licensed Product, as

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applicable, during the preceding royalty period, or in the absence of such sales, based on the fair market value of the Licensed Products, as determined by the Parties in good faith. For clarity, (i) Net Sales shall not include amounts [*] in consideration of [*], provided that such consideration [*], (ii) sales to [*], or [*] shall be considered sales to [*], (iii) Net Sales by a Related Party to a non-Related Party consignee are not recognized as Net Sales by such Related Party until the non-Related Party consignee sells the Licensed Product and (iv) [*].

In the case of any Combination Product sold in the Territory, Net Sales for such Combination Product shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction $A/(A+B)$ where A is the invoice price of the Licensed Product that contains only Licensed Compound as its active ingredient if sold separately, and B is the total invoice price of the other active ingredient or ingredients in the Combination Product, if sold separately. If, on a country-by-country basis, the other active ingredient or ingredients in the Combination Product are not sold separately in said country, Net Sales for the purpose of determining royalties of the Combination Product shall be calculated by multiplying actual Net Sales of the Combination Product by the fraction C/D , where C is the invoice price of the Licensed Product that contains only Licensed Compound as its active ingredient if sold separately, and D is the invoice price of the Combination Product. If neither the Licensed Product that contains only Licensed Compound as its active ingredient nor the other active ingredient(s) are sold separately in a given country, the Parties shall determine Net Sales in accordance with the formulas provided above in this paragraph based on [*], or, if neither the Licensed Product that contains only Licensed Compound as its active ingredient nor the other active ingredient(s) are sold in any other countries, the Parties shall negotiate in good faith a reasonable adjustment to Net Sales in such country [*]. Notwithstanding the foregoing, for purposes of determining royalties and milestones on Net Sales under this Agreement, the portion of Net Sales of the Combination Product allocated to the Licensed Product shall [*].

Should Eiger, its Affiliates or Sublicensees enter into a Third Party agreement for the purchase of a Licensed Product that provides discounts or rebates on such Licensed Product that are conditioned on pricing terms or conditions for purchase of another product or products owned or Controlled by Eiger, its Affiliates or Sublicensees, as the case may be, then the discount or rebate on such Licensed Product under such agreement shall be determined, for purposes of determining Net Sales under this Agreement for a given accounting period, based on [*].

1.42 “Patent Rights” means (a) patents and patent applications, (b) all divisionals, continuations, continuations-in-part thereof or any other patent application claiming priority directly or indirectly to (i) any of the patents or patent applications in subsection (a), or (ii) any patent or patent application from which the patents or patent applications in (a) claim direct or indirect priority, (c) all patents issuing on any of the foregoing in (a)-(b), (d) all foreign counterparts of any of the foregoing in (a)-(c), including PCT Applications, and (e) all registrations, reissues, re-examinations, supplemental protection certificates, or extensions of any of the foregoing in (a)-(d).

1.43 “Person” means any individual, firm, corporation, partnership, limited liability Eiger, trust, business trust, joint venture, governmental authority, association or other entity.

1.44 “Phase II Clinical Trial” means a Clinical Trial of a Licensed Product on a sufficient number of subjects that is designed to explore a variety of doses, dose response, and duration of effect, and to generate initial evidence of clinical safety and activity in a target patient population, as described in 21 C.F.R. 312.21(b), or a similar clinical study prescribed by a Regulatory Authority outside the U.S.

1.45 “Phase IIa Clinical Trial” means a Phase II clinical trial of a compound or product, the principal purpose of which is a preliminary determination of safety and pharmacodynamic effect or efficacy in the target population over a range of doses.

1.46 “Phase IIb Clinical Trial” means a Phase II clinical trial of a compound or product, the principal purpose of which is a further determination of efficacy and safety, in the target population, at the intended clinical dose or doses or range of doses, on a sufficient number of subjects and for a sufficient period of time to confirm the optimal manner of use of such compound or product (dose and dose regimen) prior to initiation of the Phase III Clinical Trials.

1.47 “Phase III Clinical Trial” means a Clinical Trial of a Licensed Product on a sufficient number of subjects that is designed to establish that a pharmaceutical product is safe and efficacious for its intended use, and to determine warnings, precautions, and adverse reactions that are associated with such pharmaceutical product in the dosage range and dose duration to be prescribed, which trial is intended to support Approval of a Licensed Product, as described in 21 C.F.R. 312.21(c), or a similar clinical study prescribed by a Regulatory Authority outside the U.S.

1.48 “PMDA” means the Japanese Pharmaceutical and Medical Device Agency or its successor, or Ministry of Health, Labour and Welfare.

1.49 “PMDA Filing” means the acceptance by the PMDA of the filing of an MAA for the applicable Licensed Product in Japan.

1.50 “Regulatory Authority” means any national or supranational governmental authority, including the FDA, PMDA or EMA, that has responsibility in countries in the Territory over the Development and/or Commercialization of the Licensed Compounds and/or Licensed Products.

1.51 “Sublicense Revenues” means all consideration Eiger receives from a Sublicensee pursuant to any Sublicense or from a Third Party assignee pursuant to an assignment of this Agreement that is not a permitted assignment pursuant to Section 15.4.2, including any upfront payment, milestone payments and royalty payments (excluding that portion of any milestone or royalty payment amounts received from a Sublicensee or assignee that are paid by Eiger as milestone and royalty payments to BMS under Article 8 hereof); collaboration fee; and premiums on equity investments in Eiger in connection with the grant of the Sublicense (with the premium to be reasonably allocated to the value of this Agreement as compared to Eiger’s other assets) [*]; and in any event excluding, for clarity, any amounts received by Eiger: (a) as bona

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fide, fair market value, actual reimbursement for research, Development or Commercialization activities performed or paid for by Eiger after the grant of a Sublicense, and only to the extent they are documented and are reasonably detailed [*]; (b) for reimbursement of Eiger's fully-burdened cost to manufacture and supply Licensed Products or Licensed Compounds; or (c) in the form of bona fide loans made by Sublicensee or assignee to Eiger. For clarity, Sublicense Revenues from milestones and royalties include the amounts received by Eiger in excess of the amounts paid to BMS under Article 8 for substantially the same milestone or royalties. By way of illustration, and not limitation, if Eiger receives a [*] milestone payment from a Sublicensee in the amount of [*], then (assuming Eiger pays the [*] milestone due to BMS [*]) the Sublicense Revenue amount shall be [*] with respect to such payment. For further clarity, a Change of Control of Eiger shall not be deemed a Sublicense. "Change of Control" shall mean any transaction or series of transactions, whether by merger, sale of substantially all of the assets, or sale or transfer of more than fifty percent (50%) of the outstanding stock of Eiger in which the members of the Board of Directors immediately preceding the closing of the Change of Control transaction no longer constitute a majority of the Board of Directors of the surviving entity following the closing of such transaction.

1.52 "Sublicense" means a grant of rights by Eiger to a Sublicensee under any of the rights licensed to Eiger by BMS under Section 2.1 with respect to the Development, manufacture, or Commercialization of any Licensed Product or Licensed Compound, and includes any reverse co-promotion agreements.

1.53 "Sublicense Agreement" means a written, definitive agreement for a Sublicense.

1.54 "Sublicensee" means any Third Party to whom rights are granted under any of the rights licensed to Eiger by BMS under Section 2.1 with respect to any Licensed Product or Licensed Compound, including through any license, sublicense, co-development, co-discovery, co-promotion, distribution, joint venture, Development and Commercialization collaboration or similar transaction between Eiger (or an Affiliate of Eiger) and a Third Party. For clarity, a Distributor or an Eiger contractor permitted pursuant to Section 3.7 is not considered a Sublicensee.

1.55 "Territory" means worldwide.

1.56 "Third Party" means any Person other than Eiger and BMS, and any Affiliates of Eiger and BMS.

1.57 "United States" or "U.S." means the United States of America including Puerto Rico and any U.S. territories and possessions.

1.58 "Valid Claim" means a claim of (i) an issued and unexpired patent, which claim has not been held invalid or unenforceable by a court or other government agency of competent jurisdiction from which no appeal can be or has been taken and has not been held or admitted to be invalid or unenforceable through re-examination or disclaimer, opposition procedure, nullity suit or otherwise, or (ii) a pending patent application that has not been finally abandoned, finally rejected or expired; *provided, however*, that if a claim of a pending patent application shall not

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have issued within [*] after the earliest filing date from which such claim takes priority, such claim shall not constitute a Valid Claim for the purposes of this Agreement unless and until a patent issues with such claim.

Additional Definitions. In addition to those terms defined above, definitions for each of the following terms are found in the body of this Agreement as indicated below:

<u>Defined Term</u>	<u>Section</u>
<i>BMS</i>	Preamble
<i>BMS Reversion Products</i>	13.4.1
<i>Business Combination</i>	13.2.4
<i>CDA</i>	1.17
<i>CTA</i>	1.30
<i>CTX</i>	1.30
<i>Eiger</i>	Preamble
<i>Effective Date</i>	Preamble
<i>Force Majeure</i>	15.3
<i>Indemnification Claim</i>	12.3
<i>Indemnitee</i>	12.3
<i>Indemnitor</i>	12.3
<i>Indication</i>	8.2.1(v)
<i>Inventory Disposal Period</i>	13.4.5
<i>Joint Invention</i>	10.1
<i>Joint Patent Rights</i>	10.1
<i>Know-How Transfer Period</i>	3.1
<i>Liability Cap</i>	9.5
<i>Losses and Claims</i>	12.1
<i>“Party” or “Parties”</i>	Preamble
<i>PCT Application</i>	1.5
<i>Pharmacovigilance Agreement</i>	3.5
<i>Related Party</i>	1.41
<i>Royalty Term</i>	8.4.2
<i>Skipped Milestone</i>	8.2.1(iii)
[*]	8.2.1(i)
<i>Surviving Sublicensee</i>	2.2.1(g)
<i>TA Period</i>	3.2
<i>Third Party Compensation</i>	8.4.4
<i>Title 11</i>	13.10
<i>Transferred Materials</i>	4.1
<i>Triggering Event</i>	5.6.2

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ARTICLE 2

LICENSE GRANT

2.1 BMS Patent Rights and BMS Know-How.

2.1.1 Subject to all the terms and conditions set forth in this Agreement, BMS hereby grants to Eiger a non-transferable (except in accordance with Section 15.4), exclusive license, with the right to sublicense in accordance with Section 2.2, under the BMS Patent Rights and BMS Know-How solely to the extent necessary to research, discover, Develop, make, have made, use, sell, offer to sell, export and import Licensed Compounds and/or Licensed Products in the Field in the Territory. For clarification, nothing in this Section 2.1 or this Agreement shall be interpreted as a grant of rights to make, have made, sell, use, co-formulate or use in combination a Licensed Compound with any molecule that is not a Licensed Compound and is proprietary to BMS or its Affiliate or would require a license from BMS with respect to the composition, method of use or manufacture of such other molecule (unless separately licensed from BMS or its Affiliates with BMS and its Affiliates being under no obligation, express or implied, to do so).

2.1.2 Subject to all the terms and conditions set forth in this Agreement, BMS hereby grants to Eiger a non-transferable (except in accordance with Section 15.4), non-exclusive license, without the right to sublicense except to Eiger Affiliates and non-profit institutions solely for the purpose identified in Section 5.7), under patent rights and know-how Controlled by BMS or its Affiliates covering the manufacture, composition of matter or method of use of the reagents and research tools set forth on Appendix 10 hereto, solely to the extent necessary to research, discover, Develop, make, have made, use, sell, offer to sell, export and import Licensed Compounds and/or Licensed Products in the Field in the Territory.

2.2 Sublicenses. Eiger shall have the right to grant Sublicenses with respect to the rights licensed to Eiger under Section 2.1: [*], *provided* that, in each case (x) and (y), such Sublicenses are granted solely in accordance with this Section 2.2:

2.2.1 Eiger shall have the right to enter into a Sublicense Agreement [*], *provided* that:

(a) such Sublicense Agreement shall refer to this Agreement and shall be subordinate to and consistent with the terms and conditions of this Agreement, and, shall not limit Eiger's ability to fully perform all of its obligations under this Agreement (except to the extent assumed by Sublicensee but as to which Eiger remains responsible to BMS for the performance thereof by the Sublicensee) or BMS' rights under this Agreement;

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(b) in such Sublicense Agreement, the Sublicensee shall agree in writing to fully perform the terms and conditions of this Agreement applicable to the Sublicensee;

(c) promptly after the execution of such Sublicense Agreement, Eiger shall provide a copy of such Sublicense Agreement to BMS, which copy may be redacted to remove confidential terms that are not necessary for BMS to confirm the Sublicense Agreement's compliance with, or calculations of Sublicense Revenues under, the terms and conditions of this Agreement;

(d) Eiger shall remain primarily responsible and liable for performance of all of its obligations under this Agreement (even where sublicensed or assumed by a Sublicensee) and for compliance by its Sublicensees with applicable terms of this Agreement, including all payments due (including, without limitation, its payment obligations under Sections 11.1 and Articles 8 and 10 hereof) and the making of reports under this Agreement on account of its Sublicensees' activities under the Sublicense Agreement, and shall use Commercially Reasonable Efforts to monitor such Sublicensee's compliance with and to enforce the terms of such Sublicense Agreement;

(e) the Sublicensee shall assume and agree in writing to be bound by and comply with the applicable terms and conditions of this Agreement in the same manner as Eiger, including, without limiting the generality of the foregoing, the Sublicensee shall [*];

(f) such Sublicensees shall [*], except with prior written consent of Eiger and BMS in each of their sole discretion and in any event in accordance with and subject to all of the terms and conditions of this Section 2.2 and all of the other terms and conditions of this Agreement;

(g) any Sublicense rights granted by Eiger in a Sublicense Agreement (to the extent such Sublicense rights are granted to Eiger in this Agreement) shall terminate effective upon the termination under Article 13 of the license from BMS to Eiger with respect to such sublicensed rights, provided that such Sublicense rights shall not terminate if, as of the effective date of such termination under Article 13, the Sublicensee is not in material breach of its obligations to Eiger under its Sublicense Agreement, the Sublicensee was previously granted an exclusive Sublicense to Develop and Commercialize the Licensed Products or Licensed Compounds, and, within sixty (60) days of such termination, the Sublicensee agrees in writing to be bound directly to BMS under a license agreement substantially similar to this Agreement with respect to the rights and obligations Sublicensed by Eiger to the Sublicensee under the Sublicense Agreement, substituting such Sublicensee (a "Surviving Sublicensee") for Eiger, and provided further that (A) such license agreement shall [*]; (B) the scope of the rights granted to and obligations assumed by the Surviving Sublicensee under such license agreement (with respect to licensed activities, Licensed Products and territory) shall [*]; (C) Eiger shall no longer be obligated under this Agreement to pay amounts set forth in this Agreement, to the

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extent such amounts are payable based on the activities of such Surviving Sublicensee, its Affiliates and its sublicensees from and after the effective date of such termination; (D) such license agreement shall obligate the Surviving Sublicensee to [*] from and after the effective date of such termination, [*]; (E) the Sublicensee [*] as of the effective date of termination; and (F) except as expressly set forth in the license agreement or agreed by Eiger, such license agreement shall not [*];

(h) the provisions of this Section 2.2 shall also apply in the event of any subsequent amendment or modification of any such Sublicense Agreement; and

(i) BMS shall be made an express third party beneficiary of the Sublicensee's obligations under such Sublicense that relate to compliance with the applicable terms and conditions of this Agreement with the express right to enforce same directly against the Sublicensee or against Eiger as BMS may elect .

2.2.2 For clarity, where provisions of this Agreement provide that Eiger shall be "solely" responsible or the like with respect to a matter (for example, Sections 5.4, 5.5, or 7.1), it is understood that such responsibilities may be carried out or borne on Eiger's behalf by an Affiliate of Eiger or by a permitted Sublicensee or contractor of Eiger.

2.2.3 It shall be a material breach of this Agreement for Eiger to enter into any Sublicense hereunder not in compliance with this Section 2.2 without the prior written consent of BMS.

2.3 No Trademark License. No right or license, express or implied, is granted to Eiger to use any trademark, trade name, trade dress, domain name, logos, slogans, or service mark owned or Controlled by BMS or any of its Affiliates. Eiger, at its sole cost and expense, shall be responsible for the selection, registration and maintenance of all trademarks which it employs in connection with Licensed Products and its activities conducted pursuant to this Agreement, if any, and shall own and Control such trademarks.

2.4 No Implied Licenses. No license or other right is or shall be created or granted hereunder by implication, estoppel or otherwise. All such licenses and rights are or shall be granted only as expressly provided in this Agreement.

2.5 Retained Rights. All rights not expressly granted by a Party hereunder are reserved by such Party and may be used by such Party for any purpose. Without limiting the foregoing, [*]. Nothing in this Agreement shall prevent (i) Eiger and its Affiliates from using for any purpose any BMS Know-How that is in the public domain as of the Effective Date (or enters the public domain thereafter) and is not covered by a Valid Claim of a BMS patent right or (ii) BMS and its Affiliates from using for any purpose any BMS Know-How that is in the public domain as of the Effective Date (or enters the public domain thereafter) and, subject to terms of this Agreement, is not covered by a Valid Claim of a BMS Patent Right.

ARTICLE 3

TRANSFER OF KNOW-HOW, IND AND PGX DATABASE; TECHNICAL ASSISTANCE

3.1 Documentation.

3.1.1 BMS shall provide Eiger with electronic (or tangible embodiments, if electronic is not available) of the Know-How listed on Appendix 6 within the period of time following the Effective Date and in the format set forth on Appendix 6, including copies of originals of laboratory notebooks or pages thereof and, where required by Eiger to fulfill its duties under applicable Law, copies of manufacturing run and batch records required to be maintained by BMS under applicable Law; *provided* that, with respect to BMS Know-How contained in laboratory notebooks, BMS shall only be required to provide Eiger with copies of those laboratory notebook pages (electronic copies, if they exist) [*] that contain BMS Know-How relating to Licensed Compounds. Such documentation is Confidential Information of BMS licensed in accordance with this Agreement and shall not be used by Eiger for any purpose other than for the discovery, research, manufacture, Development or Commercialization (including any import, manufacture, use, offer for sale, or sale) of Licensed Compounds and/or Licensed Products in accordance with this Agreement. BMS shall be responsible for providing one (1) set of copies (electronic, where they exist) only and Eiger shall [*]. BMS shall have no obligation to reformat or otherwise alter or modify any materials, or to create materials in electronic form, in order to provide them to Eiger. Any and all materials and other BMS Know-How delivered to Eiger pursuant to this Section 3.1 are and shall remain the sole property of BMS.

Without limiting the foregoing, if, within [*] after the Effective Date, if Eiger reasonably determines that there is additional, specific BMS Know-How Controlled by BMS and its Affiliates that existed as of the Effective Date that is reasonably necessary for the continued Development or manufacture (but only those manufacturing and formulation processes, techniques and trade secrets used by BMS for making such Licensed Compounds as of the Effective Date) of any Licensed Compound or Licensed Product that has not been provided during the Know-How Transfer Period, then Eiger may request within such [*] that BMS transfer to Eiger such additional BMS Know-How and BMS will endeavor to locate and provide same, provided that BMS shall not be required to conduct an unreasonable search for any such additional BMS Know-How. BMS shall have no obligation to reformat or otherwise alter or modify any materials, or to create materials in electronic form, in order to provide them to Eiger.

3.1.2 Notwithstanding Sections 3.1.1 or 3.2, nothing herein shall require BMS to transfer, disclose or provide to Eiger (i) any reagents, assays or other tangible biological or chemical materials that are not listed on Appendix 4 and, (ii) any general information or know-how that should reasonably be known to a pharmaceutical company engaged in the research, development, manufacture or commercialization of interferon therapeutic agents to treat Hepatitis B or Hepatitis C.

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3.1.3 Any data or information included in the INDs to be transferred under Section 3.3 does not need to be separately transferred pursuant to Section 3.1.1 or Section 3.2.

3.2 Technical Assistance. During the [*] period following the Effective Date (the “TA Period”), BMS shall reasonably cooperate with Eiger to provide transition and technical assistance to Eiger in order to understand and use the BMS Know-How provided to Eiger under Section 3.1 (for clarity, this support does not include integration of the data/information into Eiger systems/repositories). Such cooperation shall include providing Eiger with reasonable access by teleconference or in-person at BMS’ facilities (subject to BMS’ customary rules and restrictions with respect to site visits by non-BMS personnel) to BMS personnel who are appropriately qualified and experienced for such purpose, directly involved in the research and Development or manufacture of Licensed Compounds and Licensed Products. In no event shall BMS be obligated to provide Eiger with more than [*] FTE hours of technical assistance and consultation in connection with the BMS Know-How transferred under Section 3.1 to the extent the Know-How does not relate to manufacturing Know-How, and (y) [*] FTE hours technical assistance and consultation in connection with the BMS Know-How transferred under Section 3.1 to the extent it relates to manufacturing (including CMC) Know-How. [*]. If Eiger believes it needs additional assistance, it will discuss same with BMS, and, at BMS’ sole discretion, BMS may provide additional assistance requested by Eiger, and [*]. Further: (i) such access shall be requested and coordinated through a single contact person to be designated by BMS, (ii) BMS makes no warranty, express or implied, that Eiger shall be able to successfully implement and use the BMS Know-How, and (iii) BMS shall not be in default hereunder for any inadvertent failure to disclose all pertinent information related to the BMS Know-How, provided that such information shall be supplied to Eiger promptly upon discovery of such failure to disclose or upon request of Eiger identifying with reasonable specificity the nature of the information to be disclosed. Eiger shall be responsible for ensuring that its personnel who receive such assistance are appropriately qualified and experienced for such purpose.

3.3 IND. BMS will assign and transfer within [*] after the Effective Date all of its rights, title and interests in and to the active IND [*] (but, for clarity, not any CTAs, CTXs or investigational medicinal product dossiers nor any inactive IND) for the Licensed Compounds. Eiger will cooperate in connection therewith and shall perform all duties under such IND from and after such assignment. Subject to the foregoing, the Parties will reasonably cooperate to ensure an orderly transition of duties under such IND and to fulfill applicable filing obligations with regulatory authorities. BMS will continue to conduct and close out any existing CTAs and CTXs in the ordinary course following the Effective Date.

3.4 Safety Database. BMS shall transfer to Eiger the safety database for the Licensed Compounds, in the form in which it is held by BMS, as soon as practicable and in any event within [*] after the Effective Date, and Eiger shall perform all responsibilities thereafter with respect to reporting of adverse events relating to the Licensed Compounds.

3.5 [*]

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3.6 Third Party Agreements. BMS shall use Commercially Reasonable Efforts to promptly assign to Eiger any unexpired Third Party agreements solely and exclusively related to the research and non-clinical Development of the Licensed Compound (and not related as well to any other proprietary molecules of BMS that are not interferons) set forth on Appendix 11 and is assignable to Eiger without consent of such Third Party, provided, however, that if such Third Party agreement is not assignable to Eiger without the written consent of such Third Party, BMS shall use Commercially Reasonable Efforts to obtain a consent to such assignment (but which shall not, for clarity, require BMS to pay any termination fee or additional consideration to the other party to such agreement).

3.7 Eiger Contractors. For clarity, references to Eiger in Article 3 (except Section 3.8) and Article 4 shall include Third Party contractors engaged by Eiger to perform services for the benefit of Eiger (i.e., Third Parties who receive limited rights to perform services similar to other parties on a basis and on terms customarily understood for a vendor, such as a contract manufacturing organization) who have entered into appropriate agreements protecting the confidentiality and proprietary nature of the BMS Know-How, Licensed Compounds, technical data and information and other Transferred Materials (as defined below) in accordance with this Agreement, provided, that Eiger shall remain responsible and liable for the compliance by such individuals with the terms of this Agreement and shall use Commercially Reasonable Efforts to require such Third Parties to assign to Eiger any inventions and know-how relating to the License Compounds and Licensed Products that may be made or generated by them in the course of their services for Eiger.

3.8 USAN. Within [*] after the Effective Date, BMS and Eiger shall take all reasonably necessary actions (including the filing of any necessary forms) for the United States Adopted Names Council to remove BMS and include Eiger as the manufacturer of the Licensed Compounds and Licensed Products. Eiger shall be solely responsible for the payment all related fees.

ARTICLE 4

TRANSFER OF MATERIALS

4.1 Materials. BMS shall initiate the transfer to Eiger (i) within the time period after the Effective Date specified in Appendix 4, those Licensed Compounds identified in Appendix 4, ex-works (EXW) BMS designated site in the United States and/or Belgium, in the quantities set forth in Appendix 4, and (ii) within [*] after the Effective Date, those reagents and research tools set forth on Appendix 10 (any such materials that are actually transferred, the "Transferred Materials"). The Transferred Materials shall be transferred to Eiger at the location(s) designated by Eiger within [*] after the Effective Date. Title and risk of loss shall be transferred to and borne by Eiger upon delivery of the Transferred Materials by BMS to a common carrier for shipment to Eiger, and Eiger shall be responsible for any indirect taxes levied upon the transfer, including customs duties and import VAT if applicable. [*]. Other than the Transferred Materials, unless included within the scope of BMS Know-How and identified on Appendix 4 or Appendix 10 and subject to Section 3.2, BMS shall have no obligation to provide Eiger with any compounds or other materials, such as assays or biomaterials, under this Agreement. To the

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extent set forth in [Appendix 4](#), BMS represents and warrants that the Transferred Materials are manufactured in accordance with cGMP and any manufacturing specifications included within the IND relating to such Transferred Materials. Except as expressly set forth above, the Transferred Materials are provided **“AS IS” and BMS makes no representations or warranties, express or implied, as to the Transferred Materials, including any warranty as to merchantability or fitness for a particular use or purpose.** If requalification of any Licensed Compound included within the Transferred Material is required, it will be the responsibility of Eiger to perform such requalification at its expense and BMS will not be responsible for such requalification. Eiger agrees that: (a) Eiger shall be fully responsible for its and its Affiliates’, Sublicensees’ and contractors’ use, storage, handling and disposition of the Transferred Materials, (b) under no circumstances shall BMS be liable or responsible for Eiger’s or its Affiliates’, Sublicensees’ and contractors’ use, storage, handling or disposition of the Transferred Materials (except for BMS’ breach of the warranty set forth above), and (c) Eiger assumes sole responsibility for any claims, liabilities, damages and losses that might arise as a result of Eiger’s and its Affiliates’, Sublicensees’ and contractors’ use, storage, handling or disposition of any Transferred Material (except to the extent resulting from BMS’ breach of the warranty set forth above). Eiger shall indemnify, defend and hold harmless BMS and its Affiliates, and their respective officers, directors, employees, agents, licensors, and their respective successors, heirs and assigns and representatives, from and against any and all third party damages, liabilities, losses, costs and expenses (including reasonable legal expenses, costs of litigation and reasonable attorney’s fees) arising in connection with any claims, suits, proceedings, whether for money damages or equitable relief, of any kind, arising out of or relating to Eiger’s, or any of its Affiliates’, Sublicensees’ or contractors’ use, storage, handling or disposition of any Transferred Material (except for BMS’ breach of the warranty set forth above). Transferred Materials may only be provided by Eiger to Affiliates of Eiger, Sublicensees and contractors of Eiger.

ARTICLE 5

DEVELOPMENT

5.1 Development. Eiger shall itself or through its Affiliates or Sublicensees use Commercially Reasonable Efforts to Develop Licensed Products for Approval in the Major Market Countries, including by (i) setting forth in the Development Plan a program of Development activities and reasonable estimated timelines therefor for each phase of pre-clinical and clinical Development for Licensed Compounds and Licensed Products (it being understood that such Development Plan may be revised as a result of input from Regulatory Authorities and data generated by Eiger as it Develops Licensed Products), and (ii) assigning appropriately qualified and experienced personnel to perform and monitor the progress of, or overseeing Third Parties who perform, such Development activities on an on-going basis. The initial Development Plan as of the Effective Date is attached hereto as [Appendix 2](#). During the Term, Eiger shall promptly provide BMS no later than January 31 of each Calendar Year with a copy of the revised Development Plan (such annual updates to the Development Plan may be provided as part of the Development Report outlined in Section 5.2). Eiger shall notify BMS of any material change (including any material delay in Development or Commercialization of Licensed Product) to the Development Plan last provided to BMS within thirty (30) days after becoming aware of such material change and the reasons therefor.

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5.2 Development Reports. Eiger shall provide BMS with written Development reports on or before January 31 of each Calendar Year during the term of Development activities summarizing (but without disclosing specific data or results) such activities in sufficient detail to enable BMS to determine Eiger's compliance with its diligence obligations in Section 5.1. Such reports shall include without limitation (a) the research and other Development activities accomplished by Eiger under the existing Development Plan through the end of the immediately preceding Calendar Year with respect to Licensed Compounds and Licensed Products, and (b) updates on Eiger's progress against the existing Development Plan; provided, however, that the first such report shall be due on or before January 31, 2017. If any such Development obligations have been sublicensed to a Sublicensee, Eiger shall require the Sublicensee to provide to BMS the same information as required of Eiger hereunder with respect to the progress of the Development of Licensed Compounds and Licensed Products by such Sublicensee. If requested by BMS, Eiger (and, if applicable, Sublicensee) personnel who prepared the report will meet with BMS (which may be by teleconference) to discuss and answer any reasonable questions or comments that BMS might have on the report and Eiger's (and, if applicable, each of its Sublicensee's) Development activities.

5.3 Records. Eiger shall maintain complete and accurate records of all work conducted in furtherance of the research, Development and Commercialization of the Licensed Compounds and/or Licensed Products and all results, data and developments made in furtherance thereof to the extent required under applicable Laws. Such records shall properly reflect all work done and results achieved in sufficient detail and in good scientific manner to the extent required under applicable Laws.

5.4 Development Responsibilities and Costs. As between the Parties, Eiger shall have sole responsibility for, and shall bear the cost of conducting, research and Development with respect to the Licensed Compounds and/or Licensed Products. Eiger shall research and Develop the Licensed Compounds and/or Licensed Products in compliance with all applicable Laws, including all legal and regulatory requirements pertaining to the design and conduct of clinical studies.

5.5 Regulatory Responsibilities and Costs. As between the Parties, Eiger shall have sole responsibility for, and shall bear the cost of preparing, all regulatory filings and related submissions with respect to the Licensed Compounds and/or Licensed Products. Except as set forth in Article 13, Eiger shall own all INDs, Approvals and submissions in connection therewith and all Approvals shall be obtained by and in the name of Eiger.

5.6 Competitive Compound.

5.6.1 For [*] after the Effective Date, neither Eiger nor its Affiliates (nor any Sublicensee of Eiger or any Affiliate of such Sublicensee) shall itself or through any Third Party, or in collaboration with any Third Party, engage, directly or indirectly in the clinical Development or Commercialization of a Competitive Compound.

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5.6.2 Notwithstanding Section 5.6.1, if Eiger or any of its Affiliates, either through its own development efforts or by acquisition, or obtains ownership of or a license to, or is acquired by or otherwise merges with an entity (or an Affiliate of such entity) that owns or has a license to, a Competitive Compound, in all such cases that would result in a violation of Section 5.6.1 (any such event, a "Triggering Event"), then Eiger shall promptly notify BMS in writing and elect (as applicable) one of the following actions within [*] after such Triggering Event:

(a) divest itself of such Competitive Compound and notify BMS in writing of such divestiture, which divestiture may occur by an outright sale to a Third Party of all of Eiger's and its Affiliate's rights to such Competitive Compound or by an outlicense arrangement under which Eiger has no continuing active involvement in the development or commercialization of such Competitive Compound (for clarity, efforts in connection with (i) the receipt and audit of payments in respect of the Competitive Compound, (ii) the maintenance, defense and enforcement of any applicable licensed patents, and (iii) the receipt of information to ensure compliance with the applicable agreement (including efforts to enforce or terminate same, or seek damages, for breach) shall not constitute continuing active involvement). Eiger shall use Commercially Reasonable Efforts to complete such divestiture within [*] after the applicable Triggering Event. If Eiger is unable to complete the divestiture within such [*] period, Eiger may continue to divest such Competitive Compound thereafter, *provided*, that Eiger or its Affiliate shall cease the Development and Commercialization of the Competitive Compound prior to the end of such [*] period and shall not restart the Development and Commercialization of the Competitive Compound thereafter (and if such Development or Commercialization is restarted, then BMS may immediately terminate this Agreement upon written notice to Eiger). For clarity, Eiger's (or its Affiliates') Development and Commercialization of the Competitive Compound in the ordinary course during such [*] period shall not be deemed a breach of Eiger's exclusivity obligations set forth herein; or

(b) Eiger shall notify BMS in writing whether Eiger desires to negotiate terms under which the Competitive Compound would be included as a Product within this Agreement. If the Parties can agree and execute a binding agreement, within [*] after notice from Eiger electing this option, on the terms (including compensation to BMS) for including the Competitive Compound as a Product within this Agreement and Eiger's Commercially Reasonable Efforts obligations under Sections 5.1 and 6.1, then Eiger shall not be deemed in breach of Section 5.6.1; *provided*, that BMS shall not be under any obligation, express or implied to negotiate or enter into any such agreement. If the Parties are unable to reach written agreement during the applicable time period, then, Eiger may elect to either divest such Competitive Compound under clause (a) or terminate this Agreement pursuant to Section 13.3.2 hereof.

5.7 Institution Requests. Eiger shall be responsible for receiving, evaluating, responding and, as applicable, fulfilling (at Eiger's discretion) requests from scientists at non-profit institutes for [*] and related reagents, including [*], for non-commercial research purposes.

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ARTICLE 6

COMMERCIALIZATION

6.1 Eiger Obligations. Eiger shall use Commercially Reasonable Efforts to (i) obtain Approvals in each Major Market Country for at least one Licensed Product, (ii) effect the First Commercial Sale of each Licensed Product for which such Approvals are obtained into each Major Market Country as soon as reasonably practicable after receipt of such Approvals and (iii) Commercialize each such Licensed Product in each such Major Market Country following such First Commercial Sale therein with the goal of maximizing the Net Sales of such Licensed Product in such Major Market Country.

6.2 Reports. Following the First Commercial Sale of a Licensed Product in a country in the Territory, Eiger shall provide BMS with a written report within thirty (30) days of the filing of the Eiger Annual Report with the U.S. Securities and Exchange Commission (or if no such report is filed, then within 30 days after the end of a calendar year), summarizing significant Commercialization activities with respect to Licensed Products during the just ended Calendar Year in countries in which there has been a First Commercial Sale of a Licensed Product, [*]. If requested by BMS, Eiger personnel who prepared the report will meet with BMS, which may be by teleconference, to discuss and answer any questions or comments that BMS might have on the report and Eiger's Commercialization activities.

ARTICLE 7

MANUFACTURE AND SUPPLY

7.1 Manufacture and Supply. As between the Parties, Eiger shall be solely responsible at its expense for making or having made all of its requirements of the Licensed Compounds and/or Licensed Products needed for Development and Commercialization of same in the Territory, except for Transferred Materials.

ARTICLE 8

FINANCIAL TERMS

In partial consideration of the rights granted by BMS to Eiger pursuant to this Agreement, Eiger shall make the payments provided for in this Article 8.

8.1 Initial Payment. Eiger shall (x) pay to BMS a nonrefundable, noncreditable payment of Two Million Dollars (\$2,000,000) in cash by wire transfer into an account designated in writing by BMS within [*] after the Effective Date and (y) enter into a Stock Purchase Agreement with BMS, issuing common stock to BMS valued at Three Million Dollars (\$3,000,000) on the Effective Date, in the form attached as Appendix 7 concurrently with the execution of this Agreement.

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8.2 Milestone Payments.

8.2.1 Development Milestones. Eiger shall pay to BMS the following milestone payments set forth in the table below within [*] after the first achievement of the specified milestone event by Eiger, its Affiliates, and Sublicensees for the first Licensed Product to achieve such milestone event in any Indication. Eiger shall provide written notice to BMS within [*] after the first achievement of the specified milestone event by Eiger, Affiliates, and Sublicensees. Each milestone payment shall not be refundable or returnable in any event.

Milestone	Amount of Milestone Payment (Dollars)
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
Total Development Milestones for First Indication	[*]
	\$ 61 million

For purposes of this Section:

(i) A [*] means that [*].

(ii) The set of milestone payments in the table above shall be payable by Eiger to BMS once per Indication upon the first achievement of each such milestone event for the first such Licensed Compound (whether the first such Licensed Compound is the lead Licensed Compound or any back-up Licensed Compound) to achieve the milestone event. Milestones payments for additional Indications that achieve the above milestones events for such additional Indication will be at [*] of the above milestone payment amounts for the first Indication.

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(iii) If a particular milestone event is not achieved with respect to an Indication (“Skipped Milestone”), such Skipped Milestone will be deemed to have been achieved upon the occurrence of the next most successive milestone with respect to such Indication, and payment for such Skipped Milestone then shall be due.

(iv) For purposes of this Section 8.2.1, “Indication” shall mean any separately defined, well-categorized class of human disease, syndrome or medical condition for which a separate marketing authorization application may be filed with a Regulatory Authority.

8.2.2 Sales-Based Milestones. Each of the following milestone payments shall be paid by Eiger to BMS for total annual sales of Licensed Product within [*] after the Net Sales of all Licensed Products in a given Calendar Year first reach the threshold amounts set forth in the table below:

Milestone – First Achievement of annual Net Sales of all Licensed Products in any Calendar Year of:	Amount of Milestone Payment (Dollars)
[*]	[*]
[*]	[*]
[*]	[*]
Total Sales-Based Milestones	\$ 128.0 million

Each milestone payment shall not be refundable or returnable in any event, nor shall it be creditable against royalties or other payments.

8.3 Sublicense Revenue Sharing. In addition to the milestones and royalty payments set forth in Sections 8.2 and 8.4, Eiger shall pay to BMS the following percentage of all Sublicense Revenues Eiger receives in connection with any Sublicense or any assignment of rights to the BMS Patents, the Licensed Compounds and/or Licensed Products, depending on the stage of Development of the most advanced Licensed Compound or Licensed Product that is subject to the applicable Sublicense or such assignment. Eiger shall pay to BMS its share of Sublicense Revenues within [*] after receipt of payment by Eiger from the Sublicensee.

**DEVELOPMENT STAGE OF LICENSED
COMPOUND OR LICENSED PRODUCT AS OF THE
DATE OF THE SUBLICENSE**

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	(A) PRIOR TO [*]	(B) IF AFTER (A) AND PRIOR TO [*]	(C) IF AFTER (B) AND PRIOR TO [*]	(D) [*]
PERCENT OF SUBLICENSE REVENUES PAYABLE TO BMS	[*]	[*]	[*]	[*]

8.4 Royalty Payments.

8.4.1 Subject to the terms of this Agreement Eiger shall pay to BMS tiered royalties based on the total annual worldwide Net Sales in the Territory of each Licensed Products (including all indications and formulations for such Licensed Product) by Eiger, its Affiliates and Sublicensees during the applicable Royalty Term for such Licensed Product. The royalty payable with respect to each particular Licensed Product shall be calculated by multiplying the applicable royalty rate below by the portion of total annual worldwide Net Sales in the applicable tier in a Calendar Year of the applicable Licensed Product by Eiger, its Affiliates and Sublicensees, as follows.

Portion of total annual worldwide Net Sales in a Calendar Year for such Licensed Product that falls within the following tiers	Royalty Rate
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

By way of example, in a given Calendar Year, if the total annual worldwide Net Sales for a Licensed Product is [*], the following royalty payment would be payable under this Section 8.4 (subject to the reductions set forth below): [*]. For clarity, all dosages, dosage forms, SKUs, methods of delivery and presentations of a Licensed Product containing the same Licensed Compound shall be considered as one Licensed Product for purposes of this Section 8.4.1.

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8.4.2 Royalty Term. Royalties shall be payable on a product-by-product and country-by-country basis on Net Sales of Licensed Products from the First Commercial Sale of a particular Licensed Product in a country until the later of (i) [*] after the First Commercial Sale of such Licensed Product in such country, (ii) the expiration of the last to expire Valid Claim in BMS Patent Right that would be infringed by the manufacture, use, sale, importation or offer for sale in such country of a given Licensed Product (including by reasons of extensions thereof under applicable Laws, including patent term extensions, or supplemental protection certificates or their equivalents in any country), or (iii) the expiration of any regulatory or marketing exclusivity for such Licensed Product in such country, including but not limited to any pediatric exclusivity and data exclusivity (the "Royalty Term"); *provided* that, if (ii) no longer applies, the royalty payable by Eiger to BMS with respect to such Licensed Product shall be determined by a royalty rate equal to [*] of the royalty rate set forth in Section 8.4.1.

8.4.3 Royalty Conditions. The royalties under Section 8.4.1 shall be subject to the following conditions:

(a) only one royalty shall be due with respect to the same unit of Licensed Product;

(b) no royalties shall be due upon the sale or other transfer among any Related Party, but in such cases the royalty shall be due and calculated upon the Related Party's Net Sales of Licensed Product to the first non-Related Party; and

(c) no royalties shall accrue on the disposition of Licensed Product in reasonable quantities by any Related Party as part of an expanded access program or as *bona fide* samples or as donations to non-profit institutions or government agencies for non-commercial purposes or for the performance of clinical trials, *provided*, in each case, that such Related Party does not receive any payment for such Licensed Product exceeding the cost of goods.

8.4.4 Royalty Reduction. If (i) Eiger, in its reasonable judgment, determines that it is required to obtain a license from any Third Party in order to avoid infringement of such Third Party's Patent Rights as a result of the Development or Commercialization (but excluding manufacturing) of any Licensed Product, (ii) such Patent Rights cover or claim the composition or method of use of a Licensed Product, and (iii) Eiger is required to pay to such Third Party a royalty, milestone payments or other monetary compensation in consideration for the grant or maintenance of such license ("Third Party Compensation"), then for the period during which Eiger owes royalties to BMS hereunder, the amounts that would otherwise have been payable as royalties to BMS under this Agreement shall be reduced by [*] of all Third Party Compensation payable by or on behalf of Eiger to such Third Party. Notwithstanding the foregoing, (x) in no event shall the royalty reductions described in this Section 8.4.4 act to reduce the royalties payable by Eiger to less than [*] of the amounts payable by Eiger for a given Calendar Quarter pursuant to Section 8.4.1, and (y) if [*], then the royalty reduction set forth in this

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Section 8.4.4 [*]. For further clarity, Eiger may carry over and apply any such royalty reductions, which are incurred or accrued in a Calendar Quarter and are not deducted in such Calendar Quarter, to any subsequent Calendar Quarter(s) in which royalties are due, subject to the same limitations set forth above and provided that if carryover cannot be so applied to future royalties, such carryover amounts shall lapse and shall not be subject any refund or other repayment from BMS.

8.4.5 Forecast. Eiger shall provide on or before September 30 of each Calendar Year a non-binding good faith forecast of sales, royalties and milestones for the entire current and next Calendar Year.

8.4.6 Effect of Patent Challenge. In the event Eiger (or any of its Affiliates or Sublicensees) challenges or knowingly assists (other than in response to a subpoena or court order), including without limitation by providing information, documents, advice, and/or funding, a challenge to the validity, scope, patentability or enforceability of any of the BMS Patent Rights, and such challenge is unsuccessful either because (i) Eiger files a suit or initiates another legal proceeding to challenging the validity or enforceability of any such BMS Patent Right and then withdraws or terminates the suit or proceeding, (ii) any challenged claim that would be infringed but for the license has been upheld, even in amended form, as determined by a court of competent jurisdiction or other legal tribunal, or (iii) Eiger, in connection with such challenge, fails to produce reasonably credible evidence demonstrating the invalidity or unenforceability of all applicable patent claims in the BMS Patent Rights in such country; then the royalty rates set forth in Section 8.4.1 above shall be increased by [*] of the percentages set forth above [*], [*]; provided however that if such challenge is by a Sublicensee, the foregoing shall not apply if Eiger promptly terminates such Sublicensee's Sublicense after become aware of such challenge (which in any event must be prior to any decision rendered with respect to such challenge).

8.5 Manner of Payment. All payments to be made by Eiger under this Agreement shall be made in U.S. Dollars by wire transfer of immediately available funds to such bank account as shall be designated by BMS. Late payments shall bear interest at the rate provided in Section 8.10.

8.6 Sales Reports and Royalty Payments. After the First Commercial Sale of a Licensed Product and during the term of this Agreement, Eiger shall furnish to BMS a written report, within [*] after the end of each Calendar Quarter (or portion thereof, if this Agreement terminates during a Calendar Quarter), showing the amount of royalty due for such Calendar Quarter (or portion thereof). Royalty payments for each Calendar Quarter shall be due at the same time as such written report for the Calendar Quarter. With each quarterly payment, Eiger shall deliver to BMS a full and accurate accounting to include at least the following information:

8.6.1 the total gross sales for each Licensed Product (by country) by Eiger and its applicable Related Parties, if any, and the calculation of Net Sales from such gross sales;

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8.6.2 the deductions by category of permitted deductions set forth in the Net Sales definition;

8.6.3 the total Net Sales for each Licensed Product (by country) by Eiger and its applicable Related Parties, if any, and the calculation of Net Sales from such gross sales;

8.6.4 the calculation of royalties payable in Dollars which shall have accrued hereunder in respect of such Net Sales;

8.6.5 withholding taxes, if any, required by applicable Law to be deducted in respect of such royalties; and

8.6.6 the exchange rates used in determining the amount of Dollars payable hereunder.

If no royalty or payment is due for any royalty period hereunder, Eiger shall so report.

8.7 Sales Record Audit.

8.7.1 Eiger shall keep, and shall cause each of its applicable Related Parties, if any, to keep, complete, true and accurate books of accounts and records in accordance with GAAP, including gross sales in accordance with GAAP and any deductions thereto in accordance with this Agreement's Net Sales definition in connection with the calculation of Net Sales, sufficient to determine and establish the amounts payable incurred under this Agreement, and compliance with the other terms and conditions of this Agreement.

8.7.2 Such books of accounting of Eiger and its Affiliates shall be kept at their principal place of business and, with all necessary supporting data and records, shall during all reasonable times for the [*] next following the end of the Calendar Year to which each shall pertain, be open for inspection not more than once per Calendar Year at reasonable times by an independent certified public accountant selected by BMS and as to which Eiger has no reasonable objection, at BMS' expense, for the purpose of verifying royalty statements and payments for compliance with this Agreement for any period within the preceding [*].

8.7.3 Eiger shall include in its Sublicense Agreements with any Sublicensees, a right for Eiger to inspect or have such an accountant inspect, not more than once during any Calendar Year, the books of accounting and such supporting data and records of such Sublicensees for the purpose of verifying royalty statements and payments for compliance with this Agreement for any period within the preceding [*].

8.7.4 Results of any inspection under Section 8.7.2 or 8.7.3 shall be made available to both Eiger and BMS, and shall be deemed Eiger's Confidential Information under this Agreement; provided that the independent, certified public accountant shall disclose to BMS only the amounts that the independent auditor believes to be due and

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payable hereunder to BMS, details concerning any discrepancy from the amount paid (including the reasons therefor) and the amount due, and shall disclose no other information revealed in such audit.

8.7.5 Such accountant must have agreed in writing to maintain all information learned in confidence, except as necessary to disclose to BMS such compliance or noncompliance by Eiger, its Affiliates or Sublicensees (who must agree in the Sublicense Agreement that such audit report may be disclosed to BMS). The results of each inspection, if any, shall be binding on both Parties. BMS shall pay for such inspections, except that in the event there is any upward adjustment in aggregate royalties payable for any Calendar Year shown by such inspection of more than [*] of the amount paid, Eiger shall pay for such inspection. Any underpayments shall be paid by Eiger within [*] after notification of the results of such inspection. Any overpayments shall be fully creditable against amounts payable in subsequent payment periods.

8.8 Currency Exchange. Eiger's then current standard exchange rate methodology will be employed for the translation of foreign currency sales into Dollars, provided such methodology is used by Eiger in the translation of its foreign currency operating results, is consistent with GAAP, and is audited by Eiger's independent certified public accountants in connection with the audit of the consolidated financial statements of Eiger, and is used for Eiger's external reporting of foreign currency operating results.

8.9 Taxes.

8.9.1 Each Party will pay any and all taxes levied on account of all payments it receives under this Agreement.

8.9.2 If laws or regulations require that taxes be withheld with respect to any royalty payments by Eiger to BMS under this Agreement, Eiger will: (a) deduct those taxes from the remittable payment, (b) pay the taxes to the proper taxing authority, and (c) send evidence of the obligation together with proof of tax payment to BMS on a reasonable and timely basis following that tax payment. Each Party agrees to cooperate with the other Party in claiming refunds or exemptions from such deductions or withholdings under any relevant agreement or treaty which is in effect. The Parties shall discuss applicable mechanisms for minimizing such taxes to the extent possible in compliance with applicable Laws. BMS will pay any and all taxes levied on account of all payments it receives under this Agreement; provided, that notwithstanding the foregoing, in the event that [*].

8.9.3 The Parties shall cooperate in accordance with applicable Laws to minimize indirect taxes (such as value added tax, sales tax, consumption tax and other similar taxes) in connection with this Agreement

8.10 Interest Due. Without limiting any other rights or remedies available to BMS, Eiger shall pay BMS interest on any payments that are not paid on or before the date such payments are due under this Agreement at a rate of [*] or the maximum applicable legal rate, if less, calculated on the total number of days payment is delinquent.

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ARTICLE 9

REPRESENTATIONS AND WARRANTIES; DISCLAIMER; LIMITATION OF LIABILITY

9.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that, as of the Effective Date: (i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement, (ii) execution of this Agreement and the performance by such Party of its obligations hereunder have been duly authorized, (iii) this Agreement has been duly executed and delivered on behalf of such Party, and is legally binding and enforceable on each Party in accordance with its terms, (iv) the performance of this Agreement by it does not create a breach or default under any other agreement to which it is a Party, (v) the execution, delivery and performance of this Agreement by such Party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it is bound, nor violate any Law or regulation of any court, governmental body or administrative or other agency having jurisdiction over such Party, (vi) no government authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any Laws currently in effect, is or will be necessary for, or in connection with, the transaction contemplated by this Agreement or any other agreement or instrument executed in connection herewith, or for the performance by it of its obligations under this Agreement and such other agreements, and (vii) neither such Party, nor any of its employees, officers, subcontractors, or consultants who have rendered services relating to the Licensed Compounds: (a) has ever been debarred or is subject to debarment or convicted of a crime for which an entity or person could be debarred by the FDA under 21 U.S.C. Section 335a or (b) has ever been under indictment for a crime for which a person or entity could be so debarred.

9.2 Representations, Warranties, and Covenants of BMS. Except as set forth on Appendix 8:

9.2.1 BMS represents and warrants to Eiger that, as of the Effective Date:

(a) there is no pending litigation, or litigation that has been threatened in writing, which alleges, or any written communication alleging, that BMS' activities with respect to the research, Development or manufacture of the Licensed Compounds prior to the Effective Date have infringed or misappropriated, or would infringe or misappropriate, any of the intellectual property rights of any Third Party, and to BMS' Knowledge, the research, Development or manufacture of the Licensed Compounds prior to the Effective Date did not infringe or misappropriate any Third Party rights.

(b) no Third Party has challenged in writing the ownership, scope, duration, validity, enforceability, priority or right to use any BMS Patent Rights (including, by way of example, through the institution of or written threat of institution of interference, *inter partes* review, reexamination, protest, opposition, nullity or similar invalidity proceeding before the United States Patent and Trademark Office or any foreign patent authority or court) or BMS Know-How,

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(c) there is no actual, pending, or, to BMS's Knowledge, alleged or threatened in writing, adverse interferences or governmental investigations or suits involving the Licensed Compounds;

(d) no BMS Patents or BMS Know-How has been licensed to BMS from any Third Party that BMS does not Control and which is material to the Development of the Licensed Compound as contemplated by the Development Plan;

(e) to BMS' Knowledge, it has complied with all applicable Laws in the Development of the Licensed Compounds prior to the Effective Date;

(f) except for the patent and patent applications that have been abandoned prior to the Effective Date, all fees required to be paid by BMS in any jurisdiction in order to maintain the Patent Rights licensed to Eiger hereunder have, to BMS' Knowledge, been timely paid as of the Effective Date and, to BMS' Knowledge, the claims included in any issued patents included in such Patent Rights are in full force and effect as of the Effective Date;

(g) BMS has full unencumbered title to the Transferred Material and sufficient right under the BMS Patent Rights and BMS Know-How to grant the licenses to Eiger as purported to be granted hereunder, and has not previously assigned, transferred, conveyed, or granted any license or other rights to its right, title and interest in the BMS Patent Rights or the BMS Know-How, in any way that would materially conflict with or materially limit the scope of any of the rights or licenses granted to Eiger hereunder;

(h) BMS solely owns all the rights, title and interest in the BMS Patent Rights and the BMS Patent Rights are free of any lien or security interest;

(i) except as set forth in Appendix 1, BMS and its Affiliates do not own or control any other Patent Rights that are necessary or, to BMS's Knowledge and reasonable belief as of the Effective Date, reasonably useful to carry out the Development (including manufacture) of Licensed Compounds and/or Licensed Products as contemplated by the Development Plan attached as Appendix 2 hereto; and

(j) subject to Section 3.1.2, to BMS' Knowledge, the documents, data and information that are included in the BMS Know-How transferred to Eiger pursuant to Section 3.1 comprise all of the Know-How Controlled by BMS that is reasonably necessary for the manufacture of BMS molecule known as PEG-interferon Lambda-1a as the same is manufactured as of the Effective Date, and

9.2.2 BMS covenants that it shall not license, sell, assign or otherwise transfer to any person (including any Affiliate of BMS) any BMS Patent Rights or any BMS Know-How, or assign or otherwise transfer any of its rights or obligations thereunder to any person (including any Affiliate of BMS) (or offer or agree to do any of the foregoing) in any manner that would have a material adverse impact on the rights granted to Eiger under this

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Agreement, except to the extent permitted by, and in compliance with, Section 15.4. In addition, BMS hereby covenants and agrees that after the Effective Date BMS shall use commercially reasonable efforts to not incur or permit to exist (and to cause each of its Affiliates not to incur or permit to exist), with respect to any BMS Patent Rights or any BMS Know-How, any lien, encumbrance, or security interest (including in connection with any indebtedness) in any manner that would have a material adverse impact on the rights granted to Eiger under this Agreement, except to the extent permitted by, and in compliance with, Section 15.4.

9.3 Representations and Warranties of Eiger. Eiger represents, warrants and covenants that:

9.3.1 it shall not engage in any activities that use the BMS Patent Rights and/or BMS Know-How in a manner that is outside the scope of the license rights granted to it hereunder,

9.3.2 all of its activities related to its use of the BMS Patent Rights and BMS Know-How, and the research, Development and Commercialization of the Licensed Compounds and/or Licensed Products, pursuant to this Agreement shall comply with all applicable Law,

9.3.3 prior to filing the first drug application (i.e., a BLA or its foreign equivalent) for a Licensed Product, Eiger shall have all licenses that are necessary in order for the manufacture, use or sale of such Licensed Product not to infringe the intellectual property of any Third Party known to Eiger as of such date, but excluding licenses applicable to any Third Party issued patents for which Eiger shall have obtained a well-reasoned, written opinion of an outside patent attorney that Eiger's activities under the scope of this Agreement are not reasonably likely to infringe any Valid Claim of such Third Party issued patent, and

9.3.4 it will make available funds necessary to consummate the transaction contemplated by this Agreement and to Develop and Commercialize the Licensed Compounds and Licensed Products in accordance with the terms of this Agreement.

9.4 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY LICENSED COMPOUNDS, LICENSED PRODUCTS, TRANSFERRED MATERIALS, THE BMS PATENT RIGHTS OR BMS KNOW-HOW OR ANY RIGHT OR LICENSE GRANTED BY BMS HEREUNDER, AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION OR WARRANTY BY BMS THAT ANY PATENT OR OTHER PROPRIETARY RIGHTS INCLUDED IN THE BMS PATENT RIGHTS ARE VALID OR ENFORCEABLE OR THAT USE OF THE BMS PATENT RIGHTS, BMS KNOW-HOW AND TRANSFERRED MATERIALS CONTEMPLATED HEREUNDER DOES NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

9.5 Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, MULTIPLE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, DAMAGE TO GOODWILL, OR LOSS OF BUSINESS), AND IN ANY CASE, BMS SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND (INCLUDING DIRECT DAMAGES) IN AN AMOUNT GREATER THAN THE AMOUNTS PAID BY EIGER TO BMS UNDER SECTIONS 8.1 AND 8.2 OF THIS AGREEMENT; *PROVIDED, HOWEVER*, THAT THE FOREGOING SHALL NOT APPLY TO ANY BREACH BY A PARTY OF ARTICLE 11 HEREOF, TO A BREACH BY EIGER OF SECTION 5.6, WILLFUL MISCONDUCT BY A PARTY, OR FOR AMOUNTS SOUGHT BY THIRD PARTIES IN CLAIMS THAT ARE SUBJECT TO THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS UNDER ARTICLE 12. FOR THE AVOIDANCE OF DOUBT, ANY DAMAGES IN THE NATURE OF LOST ROYALTIES TO BMS SHALL BE CONSIDERED DIRECT DAMAGES.

ARTICLE 10

PATENT MAINTENANCE; INFRINGEMENT; PATENT EXTENSIONS

10.1 Inventions. Inventorship of inventions conceived or reduced to practice in the course of Development activities under this Agreement shall be determined by application of United States patent Laws pertaining to inventorship. If such inventions are jointly invented in the course of Development activities by one or more employees or consultants or contractors of both Parties, such inventions shall be jointly owned ("Joint Invention"), and if one or more claims included in an issued patent or pending patent application which is filed in a patent office in the Territory claim such Joint Invention, such patent or patent application shall be jointly owned ("Joint Patent Rights"). If such an invention is solely invented by an employee or consultant of a Party, such invention shall be solely owned by such Party, and any patent filed claiming such solely owned invention shall also be solely owned by such Party. This Agreement shall be understood to be a joint research agreement in accordance with 35 U.S.C. § 102(c) to develop the Licensed Compounds and/or Licensed Products. Each Party shall enter into binding agreements obligating all employees and consultants performing activities under or contemplated by this Agreement, including activities related to the BMS Patent Rights, Licensed Compounds or Licensed Products, to assign his/her interest in any invention conceived or reduced to practice in the course of such activities to the Party for which such employee or consultant is providing its services. With respect to contractors, Eiger shall use good faith and reasonable efforts to secure an agreement from such contractor to assign or license (with the right to sublicense) to Eiger inventions (and patent rights covering such inventions) made by such contractor in performing such services for Eiger.

10.2 Filing, Prosecution and Maintenance of BMS Patent Rights. Eiger will have lead responsibility, using its in-house patent counsel or outside patent counsel selected by Eiger (such determination and outside patent counsel selection to be subject to BMS' approval, such

approval not to be unreasonably withheld), for the preparation, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of the BMS Patent Rights. Eiger shall be responsible for the costs incurred with respect to the filing, prosecution and maintenance of the BMS Patent Rights. Eiger shall provide BMS with [*] updates of the filing, prosecution and maintenance status for each of the BMS Patent Rights, and shall promptly provide copies of any material official correspondence to or from patent offices. The Parties shall reasonably consult with each other and cooperate with respect to the preparation, prosecution and maintenance of the BMS Patent Rights, including by providing assistance as described in Section 3.2, and will confer regarding where to prosecute the BMS Patent Rights. Eiger shall not take any action during prosecution and maintenance of the BMS Patent Rights that would materially adversely affect them (including reduction in claims scope), without BMS' prior express written consent (which consent shall not be unreasonably withheld, delayed or conditioned and shall be considered to be given if Eiger notifies BMS of proposed claim amendments or cancellations and BMS fails to object within [*] of such notification). Eiger may file a notice with governmental patent offices of the exclusive license to the BMS Patent Rights granted to Eiger hereunder. Post-grant proceedings involving the BMS Patent Rights, including oppositions, cancellations, *inter partes* review, and the like, shall be conducted by Eiger at the expense of Eiger, and Eiger shall promptly notify BMS of the initiation of such proceeding (or vice versa) and Eiger shall give BMS the opportunity to participate, at the sole expense of BMS, and BMS shall also participate and appear as necessary under the applicable rules governing the proceeding. Any settlement or compromise of such post-grant proceeding shall be subject to the approval of BMS, which approval shall not be unreasonably withheld, delayed or conditioned.

10.3 Patent Abandonment.

10.3.1 The Parties will confer and must mutually agree before any of the BMS Patent Rights may be abandoned in any Major Market Country; provided that BMS shall not unreasonably withhold, delay or condition its consent to a request by Eiger to abandon a BMS Patent Right if such abandonment will not adversely affect the amount or duration of any royalty payable to BMS hereunder. Eiger shall provide BMS with notice of the allowance and expected issuance date of any patent within the BMS Patent Rights, or any of the deadline for filing a new patent application, and BMS shall provide Eiger with prompt notice as to whether BMS desires Eiger to file such new patent application.

10.3.2 Subject to Section 10.3.1, in the event that Eiger decides either (a) not to continue the prosecution or maintenance of a patent application or patent within the BMS Patent Rights in any country, or (b) not to file any new patent application requested to be filed by BMS, Eiger shall provide BMS with express written notice of this decision at least [*] prior to any pending lapse or abandonment thereof, or if a decision not to continue prosecution or maintenance is responsive to an official communication from governmental agency that is received by Eiger less than [*] prior to a deadline for taking action in response thereto, then the deadline for giving such notice to BMS shall be [*] of the time remaining for response after such communication is received by Eiger. In such event, provided that the Parties have not expressly agreed to abandon a patent or not file a patent application under Section 10.3.1, then Eiger shall provide BMS with an opportunity

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to assume responsibility for all external costs reasonably associated with the filing and/or further prosecution and maintenance of such patent application and any patent issuing thereon (such filing to occur prior to the issuance of the patent to which the application claims priority or expiration of the applicable filing deadline, as set forth above). In the event that BMS assumes such responsibility for such filing, prosecution and maintenance costs, Eiger shall transfer the responsibility for such filing, prosecution and maintenance of such patent applications and patents to BMS and Eiger shall no longer have any right or license in and to such patent application and patents issuing therefrom under this Agreement.

10.4 Enforcement of BMS Patent Rights against Infringers.

10.4.1 Enforcement by Eiger. In the event that BMS or Eiger becomes aware of a suspected infringement of any BMS Patent Right in the Field, including actual or alleged infringement under 35 USC §271(e)(2) that is or would be infringing activity involving the using, making, importing, offering for sale or selling of articles that the Party reasonably believes infringes any of the Patent Rights conferred under this Agreement, such Party shall notify the other Party promptly, including all information available to such Party with respect to such alleged infringement, and following such notification, the Parties shall confer. Eiger shall have the first right, but shall not be obligated, to bring an infringement action for suspected infringement in the Field at its own expense, in its own name and entirely under its own direction and control, subject to the following: (a) BMS shall reasonably assist Eiger (at Eiger's expense) in any action or proceeding being prosecuted for suspected infringement in the Field if so requested, including by being named or joined as a plaintiff to such actions or proceedings if requested by Eiger or required by Law, (b) BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense, (c) no settlement of any such action or proceeding which restricts the scope, or adversely affects the enforceability, of a BMS Patent Right in the Field may be entered into by Eiger without the prior written consent of BMS, which consent shall not be unreasonably withheld, delayed or conditioned, and further, no settlement of any such action or proceeding which pertains to the infringement of the BMS Patent Rights by virtue of the Development or Commercialization of a Licensed Compound in the Field by a Third Party that is not a Sublicensee may be entered into by Eiger without the prior written consent of BMS, which consent shall not be unreasonably withheld, delayed or conditioned.

10.4.2 Timing; Enforcement by BMS. Eiger will have a period of [*] after its receipt or delivery of notice and evidence pursuant to Section 10.4.1 or receipt of written notice from a Third Party that reasonably evidences such infringement of the BMS Patent Rights, to elect to so enforce such BMS Patent Rights in the applicable jurisdiction (or to settle or otherwise secure the abatement of such infringement in accordance with Section 10.4.1), provided however, that such period will be (i) more than [*] to the extent applicable Law prevents earlier enforcement of such BMS Patent Right (such as the enforcement process set forth in or under the Hatch-Waxman Act), and provided further that if such period is extended because applicable Law prevents earlier enforcement, Eiger shall have until the date that is [*] following the date upon which applicable Law first

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permits such proceeding, and (ii) less than [*] to the extent that a delay in bringing such proceeding against such alleged Third Party infringer would materially limit or compromise the remedies (including monetary relief, and stay of regulatory approval) available against such alleged Third Party infringer. In the event Eiger does not so elect (or settle or otherwise secure the abatement of such infringement) before the first to occur of (A) the expiration of the applicable period of time set forth in the preceding subsections (i) and (ii), or (B) [*] before the expiration of any time period under applicable Law, that would, if a proceeding was not filed within such time period, limit or compromise the remedies available from such proceeding, it will so notify BMS in writing and in the case where BMS then desires to commence a suit or take action to enforce the applicable BMS Patent Right in the applicable jurisdiction, BMS will thereafter have the right to commence such a suit or take such action to enforce the applicable BMS Patent Right, as applicable, at BMS' expense, provided that BMS shall first consult with Eiger concerning the reasons Eiger elected not to bring such action and shall consider those reasons in good faith in deciding whether to bring such action. Eiger shall reasonably assist BMS (at BMS' expense) in any action or proceeding being prosecuted if so requested, including by being named or joined as a plaintiff to such actions or proceedings if requested by BMS or required by Law. Eiger shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or proceeding which restricts the scope, or adversely affects the enforceability, of a BMS Patent Right may be entered into by BMS without the prior written consent of Eiger, which consent shall not be unreasonably withheld, delayed or conditioned.

10.4.3 Withdrawal. If either Party brings an action or proceeding under this Section 10.4 and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify the other Party and the other Party may substitute itself for the withdrawing Party under the terms of this Section 10.4.

10.4.4 Damages. In the event that either Party exercises the rights conferred in this Section 10.4 and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all reasonable out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys' fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be [*]. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be [*]; *provided, however*, that if [*], such remaining amount [*].

10.5 Infringement of Third Party Rights

10.5.1 The Parties will promptly notify each other of any allegation that any activity under this Agreement infringes or may infringe the intellectual property rights of any Third Party.

10.5.2 In any legal allegation related to the infringement of a Third Party intellectual property right, Eiger will have the first right to control, at its expense, the defense of such allegation. BMS will have the right, at its own expense and with its own choice of counsel, to be represented in the defense of the allegation.

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10.5.3 The Parties will reasonably cooperate with each other in all respects with all matters related to the defense of any legal allegation under this section.

10.6 Patent Term Extensions. BMS and Eiger shall each reasonably cooperate with one another and shall use Commercially Reasonable Efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country with respect to Patent Rights covering the Licensed Products. If elections with respect to obtaining such patent term extensions are to be made, Eiger shall have the right, at its discretion, to make the election to seek patent term extension or supplemental protection with respect to the Patent Right for which such extension or supplemental protection should be sought, *provided* that Eiger shall use Commercially Reasonable Efforts to make such election so as to maximize the period of marketing exclusivity for the Licensed Product. For such purpose, for all Approvals Eiger shall provide BMS with written notice within [*] following receipt of each Approval. Notification of the receipt of an Approval shall be in accordance with Section 15.2 except that the notification shall be sent to:

Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 & Province Line Road
Princeton, New Jersey 08543-4000
Attention: Vice President and Chief Patent Counsel
Telephone: 609-252-4825
Facsimile: 609-252-7884

10.7 Data Exclusivity and Orange Book Listings. With respect to data exclusivity periods (including any available pediatric extensions) or periods under national implementations of Article 10.1 of Directive 2001/EC/83 (and all international equivalents), Eiger shall use Commercially Reasonable Efforts consistent with its obligations under applicable Law to seek, maintain and enforce all such data exclusivity periods available for the Licensed Products. With respect to patent listing filings in the FDA Orange Book (and foreign equivalents thereof) for issued patents for a Licensed Product, Eiger shall, consistent with its obligations under applicable Law, have the right to list in a timely manner and maintain all applicable BMS Patent Rights. At least [*] prior to an anticipated deadline for the filing of patent listing information for BMS Patent Rights, Eiger shall consult with BMS regarding the content of such filing, and shall consider BMS's comments in good faith, provided that Eiger shall have the final decision right with respect to such filing, including the Patent Rights to be listed in any FDA Orange Book or any equivalent. BMS shall provide, consistent with its obligations under applicable Law, reasonable cooperation to Eiger in filing and maintaining such Orange Book (and foreign equivalent) listings.

10.8 Notification of Patent Certification. Eiger shall notify and provide BMS with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of a

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BMS Patent Right by a Third Party filing a bioequivalent or biosimilar application or other similar patent certification or filing, and any foreign equivalent thereof. Such notification and copies shall be provided to BMS within [*] after Eiger receives such certification, and shall be sent to the address set forth in Section 10.6. In addition, upon request by BMS, Eiger shall provide reasonable assistance and cooperation (including making available to BMS documents possessed by Eiger that are reasonably required by BMS and making available personnel for interviews and testimony), at BMS' cost, in any actions reasonably undertaken by BMS to contest any such patent allegation or certification.

10.9 No Conflict Actions. BMS shall not be required to take any action pursuant to Sections 10.4, 10.7 or 10.8 that BMS reasonably determines in its sole judgment and discretion conflicts with or violates any court or government order or decree that BMS is then subject to or otherwise may create legal liability on the part of BMS.

10.10 Assignment of BMS Patent Rights to a BMS Affiliate. Notwithstanding any provision in this Agreement to the contrary, BMS shall have the right to transfer or assign ownership of any BMS Patent Rights to a BMS Affiliate as long as any such transfer or assignment is made expressly subject to and assumption in writing of the rights, obligations and licenses granted to Eiger under this Agreement. BMS shall remain responsible for the compliance by such Affiliate with the terms of this Agreement.

ARTICLE 11

NONDISCLOSURE OF CONFIDENTIAL INFORMATION

11.1 Nondisclosure. Each Party agrees that, for so long as this Agreement is in effect and for a period of [*] thereafter, a Party receiving Confidential Information of the other Party (or that has received any such Confidential Information from the other Party prior to the Effective Date under the CDA) shall (i) maintain in confidence such Confidential Information using not less than the efforts such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value, (ii) not disclose such Confidential Information to any Third Party without the prior written consent of the other Party, except for disclosures expressly permitted below, and (iii) not use such Confidential Information for any purpose except those permitted by this Agreement (which includes the performance of its obligations and the exercise of its rights under this Agreement, but it being understood that this clause (iii) shall not create or imply any rights or licenses not expressly granted under Article 2).

11.2 Exceptions. The obligations in Section 11.1 shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent proof:

11.2.1 is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

11.2.2 was known to the receiving Party or any of its Affiliates, without any obligation to keep it confidential or any restriction on its use, prior to disclosure by the disclosing Party; or

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11.2.3 is subsequently disclosed to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and is disclosed without any obligation to keep it confidential or any restriction on its use; or

11.2.4 is published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the receiving Party, other than through the receiving Party's breach of its confidentiality obligations set forth herein; or

11.2.5 has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of Confidential Information of the disclosing Party.

11.3 Authorized Disclosure. The receiving Party may disclose Confidential Information belonging to the other Party to the extent (and only to the extent) such disclosure is reasonably necessary in the following instances:

11.3.1 filing or prosecuting patents as set forth in this Agreement;

11.3.2 Eiger's research, Development or Commercialization (including any import, manufacture, use, offer for sale, or sale) activities, including Eiger's regulatory filings, with respect to Licensed Compounds and/or Licensed Product, including any Approvals or applications therefor;

11.3.3 prosecuting or defending litigation in relation to the BMS Patent Rights, BMS Know How or this Agreement, including responding to a subpoena in a Third Party litigation; provided it has used good faith and reasonable efforts to obtain a protective order for such Confidential Information;

11.3.4 subject to Section 11.4, complying with applicable Laws (including the rules and regulations of the Securities and Exchange Commission or any national securities exchange) and with judicial process, if in the reasonable opinion of the receiving Party's counsel, such disclosure is necessary for such compliance; *provided, however*, that except where impracticable, the receiving Party shall give the disclosing Party reasonable advance notice of such disclosure requirement (which shall include a copy of any applicable subpoena or order) and shall afford the disclosing Party a reasonable opportunity to oppose, limit or secure confidential treatment for such required disclosure, and in the event of any such required disclosure, the receiving Party shall disclose only that portion of the Confidential Information of the disclosing Party that the receiving Party is legally required to disclose;

11.3.5 disclosure, in connection with the performance of this Agreement and solely on a "need to know basis", to Affiliates, existing or potential collaborators (including existing or potential co-marketing and co-promotion contractors), research collaborators, employees, consultants, or agents, each of whom prior to disclosure must be bound by written obligations of confidentiality and non-use no less restrictive than the obligations set forth in this Article 11; *provided, however*, that the receiving Party shall

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remain responsible for any failure by any Person who receives Confidential Information pursuant to this Article 11 to treat such Confidential Information as required under this Article 11; and

11.3.6 made by such Party to existing or potential acquirers or merger candidates; investment bankers; public and private sources of funding; existing or potential investors, venture capital firms or other financial institutions or investors for purposes of evaluating or carrying out an acquisition, merger, or financing transaction, *provided* that such Party has used good faith and reasonable efforts to secure an agreement from any such Third Party to be bound by obligations of confidentiality and restrictions on use of Confidential Information that are no less restrictive than the obligations in this Agreement.

If and whenever any Confidential Information is disclosed in accordance with this Section 11.3, such disclosure shall not cause any such information to cease to be Confidential Information except to the extent that such disclosure results in a public disclosure of such information (otherwise than by breach of this Agreement). Where reasonably possible and subject to Section 11.4, the receiving Party shall notify the disclosing Party of the receiving Party's intent to make such disclosure pursuant to this Section 11.3 sufficiently prior to making such disclosure so as to allow the disclosing Party adequate time to take whatever action it may deem appropriate to protect the confidentiality of the information.

11.4 Terms of this Agreement. The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. For the avoidance of doubt, this Section 11.4 shall in no way prevent a Party from disclosing the existence of this Agreement or any terms of this Agreement in order to seek legal advice whenever deemed appropriate by such Party or to enforce such Party's rights under this Agreement, whether through arbitral proceedings, court proceedings or otherwise, or to defend itself against allegations or claims relating to this Agreement, or to comply with Applicable Law (except as provided in Section 11.5 below) when advised in a written opinion of outside counsel that terms of the Agreement are required to be disclosed to comply with Applicable Law.

11.5 Securities Filings. Notwithstanding anything to the contrary in this Agreement, in the event either Party proposes to file with the Securities and Exchange Commission or the securities regulators of any state or other jurisdiction a registration statement or any other disclosure document which describes or refers to this Agreement under the Securities Act of 1933, as amended, the Securities Exchange Act, of 1934, as amended, any other applicable securities Law or the rules of any national securities exchange, the Party shall notify the other Party of such intention and shall use reasonable efforts to provide such other Party with a copy of relevant portions of the proposed filing not less than [*] prior to (but in no event later than [*] prior to) such filing (and any revisions to such portions of the proposed filing a reasonable time prior to the filing thereof), including any exhibits thereto relating to this Agreement, and shall use reasonable efforts to obtain confidential treatment of any information concerning this Agreement that such other Party requests be kept confidential, and shall only disclose Confidential Information which it is advised by counsel is legally required to be disclosed. No such notice shall be required under this Section 11.5 if the substance of the description of or reference to this Agreement contained in the proposed filing has been included in any previous filing made by the either Party hereunder or otherwise approved by the other Party.

11.6 Publication by Eiger. Eiger may publish or present data and/or results relating to a Licensed Compound or Licensed Product developed in the Field in scientific journals and/or at scientific conferences, provided that Eiger shall notify BMS at least [*] in advance of the intended submission for publication or presentation of any proposed abstract, manuscript or presentation which discloses Confidential Information of BMS or discloses a patentable invention by delivering a copy thereof to BMS. BMS shall have [*] from its receipt of any such abstract, manuscript or presentation in which to notify Eiger in writing of any specific, reasonable objections to the disclosure, based on concern regarding the specific disclosure of Confidential Information of BMS, and Eiger will delete any BMS Confidential Information, and consider any other such objections in good faith, including whether it is necessary or advisable to delete any other information from such proposed publication. Once any such abstract or manuscript is accepted for publication, Eiger shall provide BMS with a copy of the final version of the manuscript or abstract.

ARTICLE 12

INDEMNITY

12.1 Eiger Indemnity. Eiger shall indemnify, defend and hold harmless BMS and its Affiliates, and their respective officers, directors, employees, agents, licensors, and their respective successors, heirs and assigns and representatives, from and against any and all damages, liabilities, losses, costs and expenses (including reasonable legal expenses, costs of litigation and reasonable attorney's fees) arising in connection with any claims, suits, proceedings, whether for money damages or equitable relief, of any kind brought by any Third Party (collectively "Losses and Claims") and arising out of or relating to (a) a breach of this Agreement by Eiger or any of its Affiliates, Sublicensees, agents and contractors, (b) the research, Development, Commercialization (including promotion, advertising, offering for sale, sale or other disposition), transfer, importation or exportation, manufacture, labeling, handling or storage, or use of, or exposure to, any Licensed Compound or any Licensed Product by or for, or failure to comply with applicable Law by, Eiger or any of its Affiliates, Distributors, Sublicensees, agents and contractors, including claims and threatened claims based on product liability, bodily injury, risk of bodily injury, death or property damage, infringement or misappropriation of Third Party patents, copyrights, trademarks or other intellectual property rights, or the failure to comply with applicable Law related to the matters referred to in this subsection (a) with respect to any Licensed Compound or any Licensed Product, (c) the prosecution, maintenance, enforcement and defense of the BMS Patents by Eiger, its Affiliates, Sublicensees, representatives and agents; and/or (d) the gross negligence, recklessness or willful misconduct of Eiger or its Affiliates or its or their respective directors, officers, employees and agents, in connection with Eiger's performance of its obligations or exercise of its rights under this Agreement; *except* in any such case for Losses and Claims to the extent reasonably attributable to any breach of this Agreement by BMS (including its representations and warranties set forth in Section 4.1 and Article 9), or BMS having committed an act or acts of gross negligence, recklessness or willful misconduct, or to the extent BMS has an indemnification obligation to Eiger pursuant to Section 12.2.

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12.2 BMS Indemnity. BMS shall indemnify, defend and hold harmless Eiger and its Affiliates, and their respective officers, directors, employees, agents, licensors, and their respective successors, heirs and assigns and representatives, from and against any and all Losses payable to a Third Party based on Claims brought by a Third Party arising out of or relating to (a) a breach of this Agreement by BMS, including the representations, warranties and covenants of BMS set forth in Section 4.1 and/or Article 9, (b) the gross negligence, recklessness or willful misconduct of BMS or its Affiliates or its or their respective directors, officers, employees and agents, in connection with BMS's performance of its obligations or exercise of its rights under this Agreement, (c) personal injury arising out of the conduct by BMS of clinical studies for the Licensed Compounds prior to the Effective Date, (d) payments for services rendered to BMS prior to the Effective Date related to the Licensed Compounds, (e) the conduct and close of any existing CTAs and CTXs for the Licensed Compound not assigned to Eiger under Section 3.3 after the Effective Date; and/or (f) any Development, use, manufacture, or Commercialization of BMS Reversion Products by BMS following the reversion thereof to BMS pursuant to Section 13.4 in the Territory, including any product liability claims and intellectual property infringement claims in the Territory or any personal injury, property damage or other damage in the Territory arising therefrom; *except* in any such case for Losses and Claims to the extent reasonably attributable to any breach of this Agreement by Eiger, its Affiliates or Sublicensees, failure of Eiger, its Affiliates or Sublicensees to comply with Applicable Law with respect to its Development or Commercialization of the Licensed Compounds or Licensed Products, or Eiger, its Affiliates or Sublicensees having committed an act or acts of gross negligence, recklessness or willful misconduct, or to the extent Eiger has an indemnification obligation to BMS pursuant to Section 12.1.

12.3 Indemnification Procedure. A claim to which indemnification applies under Section 12.1 shall be referred to herein as an "Indemnification Claim". If any Person or Persons (collectively, the "Indemnitee") intends to claim indemnification under this Article 12, the Indemnitee shall notify the Party subject to the indemnification obligation (the "Indemnitor") in writing promptly upon becoming aware of any claim that may be an Indemnification Claim (it being understood and agreed, however, that the failure by an Indemnitee to give such notice shall not relieve Indemnitor of its indemnification obligation under this Agreement except and only to the extent that the Indemnitor is actually prejudiced as a result of such failure to give notice). The Indemnitor shall have the right to assume and control the defense of the Indemnification Claim at its own expense with counsel selected by the Indemnitor and reasonably acceptable to the Indemnitee, *provided, however*, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitee, if representation of such Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceedings. If the Indemnitor does not assume the defense of the Indemnification Claim as aforesaid, the Indemnitee may defend the Indemnification Claim but shall have no obligation to do so. The Indemnitee shall not settle or compromise the Indemnification Claim without the prior written consent of the Indemnitor, and the Indemnitor shall not settle or compromise the Indemnification Claim in any manner which would have an

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adverse effect on the Indemnitee's interests (including any rights under this Agreement or the scope or enforceability of the BMS Patents Rights or BMS Know-How), without the prior written consent of the Indemnitee, which consent, in each case, shall not be unreasonably withheld, delayed or conditioned if the settlement or compromise would impose no financial or other obligations or burdens on the Indemnitee. The Indemnitee shall reasonably cooperate with the Indemnitor at the Indemnitor's expense and shall make available to the Indemnitor all pertinent information under the control of the Indemnitee, which information shall be subject to Article 11.

12.4 Insurance. Eiger shall, beginning with the initiation of the first clinical trial for a Licensed Product, maintain at all times thereafter during the term of this Agreement, and until the later of (i) [*] after termination or expiration of this Agreement or (ii) the date that all statutes of limitation covering claims or suits that may be brought for personal injury based on the sale or use of a Licensed Product have expired in all states in the U.S., insurance relating to the Licensed Product from a recognized, creditworthy insurance company, on a claims-made basis, with endorsements for contractual liability and for clinical trial and product liability, that is comparable in type and amount to the insurance customarily maintained by Eiger with respect to similar prescription pharmaceutical products that are marketed, distributed and sold in the Territory. Within ten (10) days following the Effective Date, and within thirty (30) days following any material change or cancellation in coverage, Eiger shall furnish to BMS a certificate of insurance evidencing such coverage as of such date, and in the case of cancellation, provide a certificate evidencing that Eiger's replacement coverage meets the requirements in the first sentence of this Section 12.4. The foregoing insurance requirement shall not be construed to create a limit on Eiger's liability hereunder.

ARTICLE 13

TERM AND TERMINATION

13.1 Term. This Agreement shall commence as of the Effective Date and, unless sooner terminated in accordance with the terms hereof or by mutual written consent, shall expire on a country-by-country basis and Licensed Product-by-Licensed Product basis, upon the expiration of the Royalty Term with respect to a given Licensed Product in the applicable country.

13.2 Termination by BMS. BMS shall have the right to terminate this Agreement, at BMS' sole discretion, as follows:

13.2.1 Insolvency. To the extent permitted under applicable Laws, BMS shall have the right to terminate this Agreement in its entirety, at BMS' sole discretion, upon delivery of written notice to Eiger upon the filing by Eiger in any court or agency pursuant to any statute or regulation of the United States or any other jurisdiction a petition in bankruptcy or insolvency or for reorganization or similar arrangement for the benefit of creditors or for the appointment of a receiver or trustee of Eiger or its assets, upon the proposal by Eiger of a written agreement of composition or extension of its debts, or if Eiger is served by a Third Party (and not by BMS) with an involuntary petition against it in

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any insolvency proceeding, upon the [*] after such service if such involuntary petition has not previously been stayed or dismissed, or upon the making by Eiger of an assignment for the benefit of its creditors.

13.2.2 Breach. BMS shall have the right to terminate this Agreement in its entirety, at BMS' sole discretion, (x) as provided in Section 5.6 or (y) upon delivery of written notice to Eiger in the event of any material breach by Eiger of this Agreement (except that this Section 13.2.2 shall not apply to any breach of Sections 5.1 or 6.1, which are covered under Section 13.2.3), provided that such breach has not been cured within [*] after written notice is given by BMS to Eiger; provided, however, that if such breach relates to the failure to make a payment when due, such breach must be cured within [*] after written notice thereof is given by BMS. Notwithstanding the foregoing, in the case of a bona fide dispute over whether or to what extent Eiger has breached this Agreement, this Section 13.2.2 shall not be triggered until such dispute is resolved in BMS' favor and Eiger fails to cure such breach within the applicable cure period (which shall be tolled until the resolution of the dispute); provided, that Eiger shall have timely paid any amounts that are not in dispute. Any such termination of this Agreement shall become effective at the end of the applicable cure period, unless Eiger has cured any such breach or default prior to the expiration of such cure period.

13.2.3 Termination for Failure to Develop or Commercialize. BMS shall have the right to terminate this Agreement in its entirety in the event that Eiger fails to fulfill its obligations to Develop Licensed Compounds and/or Licensed Products in accordance with Section 5.1, or to Commercialize Licensed Products in accordance with Section 6.1, *provided* that Eiger has not cured such breach within [*] following written notice by BMS which notice shall be labeled as a "notice of material breach for failure to use Commercially Reasonable Efforts," and identifies the Major Market Country(ies) in which such breach has occurred. If Eiger disputes the material breach of its obligations under Sections 5.1 and 6.1, this Section 13.2.3 shall not be triggered until such dispute is resolved in BMS' favor and Eiger fails to cure such breach within any portion of the applicable cure period then remaining (which shall be tolled until the resolution of the dispute. For clarity, if arbitration is triggered under Section 14.2 [*] after receipt of the notice from BMS, it shall have [*] after an arbitrator's decision in favor of BMS to cure the breach). Any such termination of this Agreement shall become effective at the end of the applicable remaining cure period, unless Eiger has cured any such breach or default prior to the expiration of such remaining cure period. If there is a dispute as to whether Eiger has cured within the remaining cure period following the arbitrator's decision, such dispute [*], provided, that [*].

13.2.4 Termination for Patent Challenge.

(a) BMS shall have the right to terminate this Agreement in its entirety in the event Eiger (or any of its Affiliates) challenges or knowingly supports (other than as may be necessary or reasonably required to assert a cross-claim or a counter-claim, or in response to a subpoena or court or administrative law request or order), including by providing information, documents, and/or funding, a challenge to the validity, scope,

enforceability or patentability of any of the BMS Patent Rights. BMS's right to terminate this Agreement under this Section 13.2.4 may be exercised at any time after Eiger (or any of its Affiliates) may have challenged or knowingly supports (other than in response to a subpoena or court order) a challenge to the validity, scope, enforceability or patentability of any of the BMS Patent Rights. For the avoidance of doubt, an action by Eiger or any Affiliate in accordance with Article 10 to amend claims within a pending patent application within the BMS Patent Rights during the course of Eiger's prosecution and maintenance of such pending patent application or in defense of a Third Party proceeding, or to make a negative determination of patentability of claims of a patent application of BMS or to abandon a patent application of BMS during the course of Eiger's Prosecution and Maintenance of such pending patent application, shall not, where undertaken in accordance with Article 9 hereof, constitute a challenge under this Section 13.2.4.

(b) If a Sublicensee of Eiger challenges the validity, scope or enforceability of or otherwise opposes any of the BMS Patent Rights under which such Sublicensee is sublicensed, then Eiger shall, at BMS' election and upon written notice from BMS, promptly terminate such Sublicense. Eiger shall include within each License Agreement with each Sublicensee a right on the part of Eiger to terminate such License Agreement in the event such Sublicensee challenges or knowingly supports a Third Party in challenging (other than in response to a subpoena or court order), in a judicial or administrative proceeding, including without limitation by providing information, documents, or funding, the validity, scope or enforceability of any of the BMS Patent Rights after grant of the patent and (ii) Eiger shall exercise such right to terminate the License Agreement with a Sublicensee should such Sublicensee challenge or knowingly support a Third Party in challenging (other than in response to a subpoena or court order) in a judicial or administrative proceeding the validity or enforceability of any of the BMS Patent Rights after grant of the patent. If Eiger fails to exercise such termination right against such Sublicensee or is unable to do so because it did not include such a provision in its Sublicense, BMS may terminate this Agreement.

13.3 Termination by Eiger. Eiger shall have the right to terminate this Agreement, at Eiger's sole discretion, as follows.

13.3.1 Following completion by Eiger of the [*] of the Licensed Product, upon [*] prior written notice in the case where [*], or upon [*] prior written notice in the case where [*].

13.3.2 Eiger may terminate this Agreement in the event of a material breach by BMS, provided that such breach has not been cured within [*] following written notice by Eiger. Any such termination of this Agreement shall become effective at the end of the applicable cure period, unless BMS has cured any such breach or default prior to the expiration of such cure period.

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13.4 Effect of Termination. Upon termination of this Agreement in its entirety by BMS under Section 13.2 or by Eiger under Section 13.3.1:

13.4.1 All rights and licenses granted to Eiger in Article 2 shall terminate, all rights of Eiger under the BMS Patent Rights and BMS Know-How shall revert to BMS, and Eiger and its Affiliates shall cease all use of the BMS Patent Rights, the BMS Know-How and the Transferred Materials, and shall return to BMS all unused portions of the Transferred Materials, subject, in the case of [*], to [*]. Following the effective date of such termination, all Licensed Compounds and/or Licensed Products shall thereafter be deemed "BMS Reversion Products".

13.4.2 With respect to all regulatory filings (including all INDs, MAAs, MAs, CTAs, CTXs and BLAs) and Approvals and all other regulatory filings and documents necessary to further Develop and Commercialize the BMS Reversion Products, as they exist as of the date of such termination (and all of Eiger's right, title and interest therein and thereto), BMS shall determine in its sole discretion which of these shall be (i) assigned to BMS, and Eiger shall provide to BMS one (1) copy of the applicable documents and filings, all documents and filings contained in or referenced in any such filings, together with the raw and summarized data for any preclinical and clinical studies of the BMS Reversion Products as well as any final documentation to inactivate any open INDs as BMS may elect to inactivate, subject, in the case of [*], to [*], and [*], or (ii) withdrawn, closed out, or inactivated [*]. For clarity, BMS shall have the right to use the foregoing material information, materials and data developed by Eiger solely in connection with BMS' development, manufacture and commercialization of BMS Reversion Products. BMS shall have the right to obtain specific performance of Eiger's obligations referenced in this Section 13.4.2 and/or in the event of failure to obtain assignment, Eiger hereby consents and grants to BMS the right to access and reference (without any further action required on the part of Eiger, whose authorization to file this consent with any Regulatory Authority is hereby granted) any and all such regulatory filings for any regulatory or other use or purpose in the Territory. Without limiting the foregoing in this paragraph, to the extent applicable, Eiger's obligations under Article 10 shall continue with respect to all countries in the Territory for which there is a failure to obtain assignment of all regulatory filings and Approvals.

13.4.3 All amounts due or payable to BMS that were accrued prior to the effective date of termination shall remain due and payable; but (except as otherwise expressly provided herein) no additional amounts shall be payable based on events occurring after the effective date of termination; provided, that the foregoing shall not be deemed to limit either Party's indemnification obligations under this Agreement for acts or omissions incurring prior to the termination date that are the subject of such indemnification even if the indemnification amount cannot be accrued or determined as of the termination date.

13.4.4 Should Eiger have any inventory of any Licensed Compound included in the BMS Reversion Products suitable for use in clinical trials, Eiger shall [*].

13.4.5 Should Eiger have any inventory of any Licensed Product included in the BMS Reversion Products approved and allocated prior to termination, Eiger shall have [*] thereafter in which to dispose of such inventory (subject to the payment to BMS

of any royalties due hereunder thereon) (the “**Inventory Disposal Period**”), provided however, that (i) such right shall terminate at such time that BMS purchases all remaining stocks of inventory of such BMS Reversion Product as described in this Section 13.4.6, below, and (ii) such Licensed Product shall [*] provided to such purchaser for the Licensed Product in the applicable country during the [*] period preceding such termination and, in addition, such sales shall [*] for the [*] period preceding such termination. Notwithstanding the foregoing, if BMS takes over responsibility for sale of the BMS Reversion Products in any country in the Territory prior to the end of the Inventory Disposal Period, BMS shall be required to purchase all remaining stocks of saleable inventory that meets BMS specifications and return policies of such BMS Reversion Product at [*] for such BMS Reversion Product, [*].

13.4.6 Eiger shall provide to BMS the tangible embodiments of all Know-How owned or Controlled by Eiger and its Affiliates to the extent necessary for the Development and Commercialization of the BMS Reversion Products in existence as of the date of such termination, subject, in the case of [*], to [*], and [*], including Eiger’s manufacturing processes, techniques and trade secrets for making such BMS Reversion Products and all Know-How specifically relating to any composition, formulation, method of use or manufacture of such BMS Reversion Products, and BMS shall [*]. Eiger shall reasonably cooperate with BMS to assist BMS with understanding and using the Know-How provided to BMS under this Section 13.4.7. Such cooperation shall include providing BMS with reasonable access by teleconference or in-person at Eiger’s facilities (subject to Eiger’s customary rules and restrictions with respect to site visits by non-Eiger personnel and subject, in the case of [*], to [*]).

13.4.7 To the extent that Eiger owns any trademark(s), USAN names, and/or domain names that are used in connection with a BMS Reversion Product that BMS believes would be necessary for the Commercialization of a BMS Reversion Product (as then currently marketed, but not including any marks that include, in whole or part, any corporate name or logo of Eiger), Eiger shall assign (or, if applicable, cause its Affiliate to assign) to BMS all of Eiger’s (and such Affiliate’s) right, title and interest in and to any such trademark, USAN name or internet domain name in each terminated country.

13.4.8 Eiger shall grant and hereby grants to BMS an exclusive, royalty-bearing [*], non-transferable (except as provided in Section 15.4) license, with the right to grant sublicenses, under (a)(i) any Patent Rights owned or Controlled by Eiger or its Affiliates as at the effective date of termination (other than Patent Rights Controlled by BMS and its Affiliates that were licensed to Eiger under this Agreement) and (ii) all Patent Rights owned or Controlled by Eiger or its Affiliates after the date of such termination claiming any invention conceived or reduced to practice by or on behalf of Eiger during the term of this Agreement and (b) any Trademarks and USAN names owned by Eiger that are used in connection with the Licensed Product, in each case (a) (i) and (ii) that are not Patent Rights licensed from BMS and only to the extent such Patent Rights cover the composition of matter, use, or manufacture of BMS Reversion Products (solely to the extent actually practiced in connection with the BMS Reversion Products as of such termination effective date) and that, in each case of (a) and (b), are necessary to develop, manufacture or commercialize BMS Reversion Products.

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13.4.9 Eiger shall provide to BMS all data generated during the term of this Agreement necessary for the development and/or commercialization of the relevant BMS Reversion Products and [*], subject to [*], and [*].

13.4.10 Neither Party shall be relieved of any obligation that accrued prior to the effective date of such termination.

13.4.11 BMS shall not owe any other compensation to Eiger for the research, Development and Commercialization of any BMS Reversion Product in the event of any such termination of the Agreement by BMS, except as expressly set forth in Section 13.4.8.

13.4.12 Any costs and expenses incurred by Eiger in connection with the assignments and transfers made by Eiger under this Section 13.4 shall be [*] unless [*], in which case any such costs and expenses reasonably incurred by Eiger shall be [*].

13.4.13 It is understood and agreed that BMS shall be entitled to specific performance as a remedy to enforce the provisions of this Section 13.4, in addition to any other remedy to which it may be entitled by applicable Law.

13.4.14 If Eiger is using Third Parties to manufacture and supply Licensed Compound and Licensed Product to it at the time of termination, Eiger will, at BMS' request, reasonably cooperate with BMS to assign such Third Party agreements to BMS as BMS may request. If Eiger is manufacturing any portion of the Licensed Compound and/or Licensed Product for itself, and has the capability in place as of the date of such termination to commercially manufacture and supply to BMS all or part of BMS' requirements of the applicable BMS Reversion Products for use and sale in the Territory, if BMS so elects in its sole discretion, Eiger shall supply to BMS for a period not to exceed [*] (with the period of time being within the sole discretion of BMS) as much of BMS' requirements of such BMS Reversion Products as reasonably possible for use and sale in the Territory, [*] for such BMS Reversion Products. In the event that Eiger has, prior to the date of such termination, engaged a Third Party to manufacture and supply any BMS Reversion Products, Eiger shall use reasonable efforts, at BMS' sole cost and expense, to assist in the transfer of such supply arrangements to BMS, or if not assigned or assignable, then Eiger shall supply such BMS Reversion Products [*] associated with providing such BMS Reversion Products to BMS.

13.4.15 Nothing in this Section 13.4 shall be deemed to limit any remedy to which either Party may be entitled by applicable Law.

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13.5 Effect of Termination by Eiger for Breach by BMS. Upon termination of this Agreement by Eiger pursuant to Section 13.3.2:

13.5.1 All rights and licenses granted to Eiger in Article 2 shall terminate, all rights of Eiger under the BMS Patent Rights and BMS Know-How shall revert to BMS, and Eiger and its Affiliates shall cease all use of the BMS Patent Rights, the BMS Know-How and the Transferred Materials, and shall return to BMS all unused portions of the Transferred Materials.

13.5.2 All amounts due or payable to BMS that were accrued, or that arise out of acts or events occurring, prior to the effective date of termination or expiration shall remain due and payable; but (except as otherwise expressly provided herein) no additional amounts shall be payable based on events occurring after the effective date of termination or expiration.

13.5.3 Should Eiger have any inventory of any Licensed Product approved and allocated prior to termination for sale in a terminated country, Eiger shall have [*] thereafter in which to dispose of such inventory (subject to the payment to BMS of any royalties due hereunder thereon).

13.5.4 Neither Party shall be relieved of any obligation that accrued prior to the effective date of such termination or expiration.

13.5.5 Nothing in this Section 13.5 shall be deemed to limit any remedy to which Eiger may be entitled by applicable Law.

13.6 Effect of Expiration of this Agreement. Upon expiration of this Agreement:

13.6.1 All amounts due or payable to BMS that were accrued, or that arise out of acts or events occurring, prior to the effective date of expiration shall remain due and payable; but (except as otherwise expressly provided herein) no additional amounts shall be payable based on events occurring after the effective date of expiration.

13.6.2 BMS shall have the right to retain all amounts previously paid to BMS by Eiger.

13.6.3 Neither Party shall be relieved of any obligation that accrued prior to the effective date of expiration.

13.6.4 The license with respect to BMS Patent Rights and BMS Know-How granted under Section 2.1 shall remain in effect and shall be fully paid-up.

13.7 Scope of Termination. Termination of this Agreement shall be as to all countries in the Territory and all Licensed Compounds and all Licensed Products.

13.8 Survival. The following provisions shall survive termination or expiration of this Agreement, as well as any other provisions which by their nature are intended to survive termination: Article 1 (as applicable), Sections 8.7 (for three (3) years after the end of the Calendar Year in which this Agreement was terminated), Section 9.4, Section 9.5, Section 10.1, Section 10.4 (with respect to an action, suit or proceeding commenced prior to termination),

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Section 10.8, Article 11, Article 12, Section 13.4 (if terminated by BMS under Section 13.2 or by Eiger under Section 13.3.1, Section 13.5 (if terminated by Eiger pursuant to Section 13.3.2), Section 13.6, Section 13.7, this Section 13.8, Section 13.10, Article 14 and Article 15.

13.9 Bankruptcy. The Parties agree that in the event a Party becomes a debtor under Title 11 of the U.S. Code (“Title 11”), this Agreement shall be deemed to be, for purposes of Section 365(n) of Title 11, a license to rights to “intellectual property” as defined therein. Each Party as a licensee hereunder shall have the rights and elections as specified in Title 11. Any agreements supplemental hereto shall be deemed to be “agreements supplementary to” this Agreement for purposes of Section 365(n) of Title 11.

13.10 No Limitation of Remedies. Except as herein expressly provided, notwithstanding anything to the contrary in this Agreement, except as otherwise set forth in this Agreement, termination or expiration of this Agreement shall not relieve the Parties of any liability or obligation which accrued hereunder prior to the effective date of such termination or expiration nor prejudice either Party’s right to obtain performance of any obligation. Each Party shall be free, pursuant to Article 14, to seek (without restriction as to the number of times it may seek) damages, costs and remedies that may be available under applicable Law or in equity and shall be entitled to offset the amount of any damages and costs obtained in a final determination under Article 14 of monetary damages or costs (as permitted by this Agreement) against the other Party against any amounts otherwise due to such other Party under this Agreement.

ARTICLE 14

DISPUTE RESOLUTION

14.1 Resolution by Senior Executives. Except as provided in Sections 8.7 and 14.3, in the event of any dispute between the Parties in connection with this Agreement, the construction hereof, or the rights, duties or liabilities of either Party hereunder, including any disagreement as to whether there has been a material breach of this Agreement pursuant to Sections 13.2.2, 13.2.3, or 13.3.2, the Parties shall first attempt in good faith to resolve such dispute by negotiation and consultation between themselves. In the event that such dispute is not resolved on an informal basis within [*], either Party may, by written notice to the other Party, refer the dispute to (i) [*] and (ii) [*] or, [*] for attempted resolution by good faith negotiation within [*] after such notice is received; provided, however, such executive officers of Eiger and BMS may each designate a senior manager to whom such dispute is delegated instead for such attempted resolution.

14.2 Arbitration.

14.2.1 Except as provided in Sections 8.7 and 14.3, if any dispute between the Parties relating to or arising out this Agreement cannot be resolved in accordance with Section 14.1, such dispute shall be resolved by binding arbitration administered by JAMS pursuant to JAMS’ Comprehensive Arbitration Rules and Procedures then in effect (the “**JAMS Rules**”), and judgment on the arbitration award may be entered in any court having jurisdiction thereof.

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

14.2.2 The arbitration shall be conducted by a panel of three (3) persons experienced in the pharmaceutical business: within [*] after initiation of arbitration, each Party shall select one person to act as arbitrator and the two Party-selected arbitrators shall select a third arbitrator within [*] of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be appointed by JAMS. The place of arbitration shall be in [*], and all proceedings and communications shall be in English.

14.2.3 The arbitrators shall apply the terms and conditions of this Agreement and shall not award damages in contradiction to Section 9.5. Each Party shall bear its own costs and expenses and attorneys' fees and an equal share of the arbitrators' fees and any administrative fees of arbitration regardless of the outcome of such arbitration.

14.2.4 Except to the extent necessary to confirm an award or as may be required by law, neither a Party nor an arbitrator may disclose the existence, content or results of an arbitration without the prior written consent of both Parties. The arbitrators shall have no authority to award any relief on the basis of any dispute, controversy or claim that is barred by the applicable Delaware statute of limitations.

14.3 Injunctive Relief. Notwithstanding anything in this Article 14, each Party shall have the right to seek injunctive or other equitable relief from the arbitrator or a court of competent jurisdiction pursuant to Section 15.8 that may be necessary to avoid irreparable harm, maintain the status quo or preserve the subject matter of the dispute, including any breach or threatened breach of Article 11.

ARTICLE 15

MISCELLANEOUS

15.1 Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement with respect to such provision may be realized.

15.2 Notices. Any notice required or permitted to be given by this Agreement shall be in writing and shall be delivered by hand or overnight courier with tracking capabilities or mailed postage prepaid by first class, registered or certified mail, return receipt requested and addressed as set forth below unless changed by notice so given:

If to Eiger:

Eiger BioPharmaceuticals, Inc.
350 Cambridge Ave, Suite 350
Palo Alto, CA 94306
Attention: Chief Executive Officer

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With a copy to:

Cooley LLP
3175 Hanover St.
Palo Alto, CA 94304
Attention: Glen Sato
gsato@cooley.com

If to BMS:

Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 & Province Line Road
Princeton, New Jersey 08543-4000
Attention: Vice President, Business Development

With a copy to:

Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 & Province Line Road
Princeton, New Jersey 08543-4000
Attention: Vice President & Assistant General Counsel, Business Development and Licensing

Any such notice shall be deemed delivered on the date received. A Party may add, delete, or change the person or address to whom notices should be sent at any time upon written notice delivered to the Party's notices in accordance with this Section 15.2.

15.3 Force Majeure. Neither Party shall be liable for delay or failure in the performance of any of its obligations hereunder if such delay or failure is due to causes beyond its reasonable control, including acts of God, fires, earthquakes, strikes and labor disputes, acts of war, terrorism, civil unrest or intervention of any governmental authority ("**Force Majeure**"); *provided, however*, that the affected Party promptly notifies the other Party and further provided that the affected Party shall use Commercially Reasonable Efforts to avoid or remove such causes of non-performance and to mitigate the effect of such occurrence, and shall continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the Parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution.

15.4 Assignment.

15.4.1 BMS may, without Eiger's consent, (x) assign, delegate or transfer some or all of its rights and obligations hereunder to any Affiliate of BMS, and (y) assign or transfer, in connection with any transfer or assignment of all of the BMS Patent Rights and BMS Know-How, to any Third Party (including a successor in interest by reason of merger, consolidation or sale of substantially all of the assets of BMS to which this Agreement relates).

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15.4.2 Eiger may assign or transfer all of its rights and obligations hereunder without BMS's consent to a successor in interest by reason of merger, consolidation or sale of substantially all of the assets of Eiger (and so long as such assignment or transfer includes, without limitation, all Approvals, all manufacturing assets relating to this Agreement, and all rights and obligations under this Agreement); *provided, however*, that such successor in interest shall have agreed no later than the closing of such assignment or transfer transaction to be bound by the terms of this Agreement in a writing provided to BMS.

15.4.3 Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding on, the Parties' permitted successors and assigns. Any assignment or transfer in violation of the foregoing shall be null and void and wholly invalid, the assignee or transferee in any such assignment or transfer shall acquire no rights whatsoever, and the non-assigning non-transferring Party shall not recognize, nor shall it be required to recognize, such assignment or transfer.

15.4.4 In the event that BMS assigns, delegates or otherwise transfers this Agreement in whole or in part, to an Affiliate of BMS, BMS hereby agrees to be jointly and severally liable with any such Affiliates for the actions of such Affiliates and for any and all amounts that become due and payable hereunder to Eiger. In the event that Eiger assigns or otherwise transfers or assigns this Agreement to an Affiliate of Eiger, Eiger hereby agrees to be jointly and severally liable with any such Affiliates for the actions of such Affiliates and for any and all amounts that become due and payable hereunder to BMS.

15.4.5 Notwithstanding anything to the contrary in this Agreement, in the event of any such transfer or assignment to a Third Party (including a successor in interest by reason of merger, consolidation or sale of assets permitted), the intellectual property rights of the acquiring party (if other than one of the Parties) or the acquired party (if acquired by a Party or its Affiliates) shall not be included in the technology licensed to the other Party hereunder to the extent (x) held by such Third Party that is acquired or is acquiring such Party prior to such transaction, or (y) such technology is developed thereafter outside the scope of activities conducted with respect to the Licensed Compounds or Licensed Products.

15.5 Further Assurances. Each Party agrees to do and perform all such further acts and things and shall execute and deliver such other agreements, certificates, instruments and documents necessary or that the other Party may deem advisable in order to carry out the intent and accomplish the purposes of this Agreement and to evidence, perfect or otherwise confirm its rights hereunder.

15.6 Waivers and Modifications. The failure of any Party to insist on the performance of any obligation hereunder shall not be deemed to be a waiver of such obligation. Waiver of

any breach of any provision hereof shall not be deemed to be a waiver of any other breach of such provision or any other provision on such occasion or any succeeding occasion. No waiver, modification, release or amendment of any obligation under or provision of this Agreement shall be valid or effective unless in writing and signed by each of the Parties.

15.7 Choice of Law. This Agreement shall be governed by, enforced, and shall be construed in accordance with the laws of the [*] without regard to its conflicts of law provisions.

15.8 Jurisdiction. Subject to Article 14, each Party irrevocably submits to the exclusive jurisdiction and venue of the state and federal courts for the [*] for the purposes of any suit, action, dispute, or other proceeding arising out of this Agreement or out of any transaction contemplated hereby. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the state and federal courts for the [*], and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

15.9 Publicity. Upon execution of this Agreement, Eiger may issue the press release announcing the existence of this Agreement in the form and substance as set forth in Appendix 5. Each Party agrees not to issue any other press release or other public statement disclosing other information relating to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned, *provided, however*, that such consent shall not be required for any disclosure which is required by Law or the rules of a securities exchange, as reasonably advised by the disclosing Party's outside counsel, and *provided, further*, that Eiger may from time to time issue public statements relating to the ongoing Development and/or Commercialization of Licensed Compounds and/or Licensed Products (excluding disclosure of the financial terms of this Agreement) pursuant to this Agreement without the prior written consent of BMS. The Parties agree that any such required disclosure shall not contain confidential business or technical information and, if disclosure of confidential business or technical information is required by Law, the Parties shall use appropriate diligent efforts to minimize such disclosure and obtain confidential treatment for any such information which is disclosed to a governmental agency. Each Party agrees to provide to the other Party a copy of any public announcement regarding this Agreement or the subject matter thereof as soon as reasonably practicable under the circumstances prior to its scheduled release. Except under extraordinary circumstances, each Party shall provide the other with an advance copy of any such announcement at least [*] prior to its scheduled release. Each Party shall have the right to expeditiously review and recommend changes to any such announcement and, except as otherwise required by Law, the Party whose announcement has been reviewed shall remove any information the reviewing Party reasonably deems to be inappropriate for disclosure. The contents of any announcement or similar publicity which has been reviewed and approved by the reviewing Party can be re-released by either Party without a requirement for re-approval.

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15.10 Relationship of the Parties. Each Party is an independent contractor under this Agreement. Nothing contained herein is intended or is to be construed so as to constitute BMS and Eiger as partners, agents or joint venturers. Neither Party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any Third Party.

15.11 Headings. Headings and captions are for convenience only and are not be used in the interpretation of this Agreement.

15.12 Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter of this Agreement, and supersedes and merges all prior negotiations, representations, agreements and understandings regarding the same.

15.13 Counterparts; Electronic Delivery. This Agreement may be executed in counter-parts with the same effect as if both Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument. Signatures to this Agreement transmitted by email in "portable document format" (".pdf"), or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as physical delivery of the paper document bearing original signature.

15.14 Performance by Affiliates. Each Party recognizes that the other Party may perform some or all of its obligations under this Agreement through Affiliates to the extent permitted under this Agreement; *provided, however*, that such other Party shall remain responsible for the performance by its Affiliates as if such obligations were performed by such other Party.

15.15 Exports. Eiger agrees not to export or re-export, directly or indirectly, any information, technical data, the direct product of such data, samples or equipment received or generated under this Agreement in violation of any applicable export control Laws.

15.16 Interpretation.

15.16.1 Each of the Parties acknowledges and agrees that this Agreement has been diligently reviewed by and negotiated by and between them, that in such negotiations each of them has been represented by competent counsel and that the final agreement contained herein, including the language whereby it has been expressed, represents the joint efforts of the Parties and their counsel. Accordingly, in interpreting this Agreement or any provision hereof, no presumption shall apply against any Party as being responsible for the wording or drafting of this Agreement or any such provision, and ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

15.16.2 The definitions of the terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase

“without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The word “any” shall mean “any and all” unless otherwise clearly indicated by context.

15.16.3 Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference to any Laws herein shall be construed as referring to such Laws as from time to time enacted, repealed or amended, (c) any reference herein to any Person shall be construed to include the Person’s successors and assigns, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections or Appendices, unless otherwise specifically provided, shall be construed to refer to Articles, Sections and Appendices of this Agreement; and (f) the term “and/or” in a sentence shall be construed such that the phrase “X and/or Y” means “X or Y, or both X and Y”.

15.16.4 This Agreement should be interpreted in its entirety and the fact that certain provisions of this Agreement may be cross-referenced in a Section shall not be deemed or construed to limit the application of other provisions of this Agreement to such Section and vice versa.

* * *

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties have caused this License Agreement to be executed by their respective duly authorized officers.

EIGER BIOPHARMACEUTICALS, INC.

By: /s/ David Cory

(Signature)

Name: David Cory

Title: President and CEO

Date: April 19, 2016

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Graham R. Brazier

(Signature)

Name: Graham R. Brazier

Title: Vice President, Business Development

Date: April 20, 2016

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Appendix 1

BMS Patent Rights

SEE ATTACHED

[*]

- 1 -

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Appendix 2

Initial Development Plan

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- 1 -

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Appendix 3

Licensed Compound

[*]

- 1 -

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Appendix 4

Transferred Materials to be provided by BMS

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Eiger BioPharmaceuticals Announces License of Worldwide Rights to Pegylated Interferon Lambda-1a from Bristol-Myers Squibb

Including Rights for All Indications and Associated Patents

PALO ALTO, CALIF, April 19, 2016 /PRNewswire/ — Eiger BioPharmaceuticals, Inc. (NASDAQ: EIGR) announced today that it has licensed Pegylated Interferon Lambda-1a (“Lambda”), a novel, well-characterized, first in class Type III interferon to be studied as an investigational therapy for hepatitis delta virus (HDV) infection, from Bristol-Myers Squibb. Lambda has been administered in clinical trials involving over 3,000 subjects. It has not been approved for any indication. Eiger plans to evaluate Lambda as a potential monotherapy and combination treatment for chronic HDV infection, the most aggressive and deadly form of human viral hepatitis.

“We are very excited to execute this license with Bristol-Myers Squibb. The addition of Lambda to our pipeline is a significant step toward building a leading HDV franchise,” said David Cory, President and CEO of Eiger. “There is no approved therapy for HDV. Along with Lonafarnib, our Phase 2 candidate for the treatment of HDV, Eiger has established a strategic position with the addition of Lambda. Eiger will leverage existing relationships with clinical investigators and clinical sites for efficient exploration of Lambda alone or in combination with other agents toward an approved therapy for HDV.”

“Most cells in the body express the receptor for interferon alpha, a Type I interferon. However, receptors for Lambda, a Type III interferon, are expressed on liver cells, a desirable location for treating viral hepatitis, but less so on some blood cells and non-liver cells. Lambda represents a promising and potentially better tolerated interferon therapy for HDV,” said Eduardo Martins, MD, DPhil, Senior Vice President of Liver and Infectious Diseases at Eiger.

The exclusive worldwide license from Bristol-Myers Squibb involved an upfront payment and the issuance of Eiger Common Stock and includes development and regulatory milestones through first commercial sale in the US, EU, and Japan and milestone payments based on commercial sales achievement as well as tiered annual net sales royalties.

About Sarasar™ (lonafarnib)

Lonafarnib is a well-characterized, late-stage, orally active inhibitor of farnesyl transferase, an enzyme involved in modification of proteins through a process called prenylation. HDV uses this host cell process inside liver cells to complete a key step in its life cycle. Lonafarnib inhibits the prenylation step of HDV replication inside liver cells and blocks the virus life cycle at the stage of assembly. Since prenylation is carried out by a host enzyme, this compound may present a higher barrier to development of viral resistance mutations to therapy. Lonafarnib has been dosed in over 100 HDV-infected patients across international academic centers and is in

Phase 2 development for HDV. Lonafarnib has been granted Orphan Drug Designation by the U.S. Food and Drug Administration (FDA) and European Medicines Agency (EMA), and Fast Track Designation by U.S. FDA. Lonafarnib is not approved for any indication, and is licensed from Merck Sharp & Dohme Corp. (known as MSD outside of the United States and Canada).

About Hepatitis Delta Virus (HDV)

Hepatitis Delta (or Hepatitis D) is caused by infection with HDV and is considered to be one of the most severe forms of viral hepatitis in humans. Hepatitis D occurs only as a co-infection in individuals harboring Hepatitis B Virus (HBV). Hepatitis D leads to more severe liver disease than HBV alone and is associated with accelerated liver fibrosis, liver cancer, and liver failure. Hepatitis D is a disease with a significant impact on global health, which may affect up to approximately 15-20 million people worldwide. The prevalence of HDV varies among different parts of the world. Globally, HDV infection is reported to be present in approximately 4.3% to 5.7% of chronic Hepatitis B carriers. The prevalence of HDV in patients infected with chronic HBV is even higher in certain regions, including certain parts of Mongolia, China, Russia, Central Asia, Pakistan, Turkey, Africa, and South America, with an HDV prevalence as high as 60% being reported in HBV-infected patients in Mongolia and Pakistan.

About Eiger

Eiger is a clinical-stage biopharmaceutical company committed to bringing to market novel products for the treatment of rare diseases. The company has built a diverse portfolio of well-characterized product candidates with the potential to address diseases for which the unmet medical need is high, the biology for treatment is clear, and for which an effective therapy is urgently needed.

Note Regarding Forward-Looking Statements

This press release contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this press release regarding our strategy, future operations, future financial position, future revenue, projected expenses, prospects, plans and objectives, intentions, beliefs and expectations of management are forward-looking statements. These forward-looking statements may be accompanied by such words as “anticipate,” “believe,” “could,” “estimate,” “expect,” “forecast,” “intend,” “may,” “plan,” “potential,” “project,” “target,” “will” and other words and terms of similar meaning. Examples of such statements include, but are not limited to, whether or not pegylated interferon lambda-1a or lonafarnib may be further developed and approved, statements relating to the availability of cash for Eiger’s future operations, Eiger’s ability to develop its drug candidates for potential commercialization, the timing of the commencement and completion of Phase 2 trials and whether the Lamda product can be successfully developed or commercialized. Eiger may not actually achieve the plans, carry out the intentions or meet the expectations or projections disclosed in our forward-looking statements and one should not place undue reliance on these forward-looking statements. Actual results or events could differ materially from the plans, intentions, expectations and projections disclosed in the forward-looking statements. Various important factors could cause actual results or events to differ materially from the forward-looking statements that Eiger

- 2 -

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makes, including the risks that Eiger's planned clinical trials may be prolonged or delayed requiring Eiger to incur additional costs; that Eiger's planned clinical trials may not satisfy the requirements of the FDA or non-U.S. regulatory authorities; that Eiger's product candidates may have undesirable side effects which may delay or prevent marketing approval; that, even if approved by the FDA or non-U.S. regulatory authorities, Eiger's product candidates may not achieve broad market acceptance; and the risks described in the "Risk Factors" sections the Registration Statement on Form S-4 (file no. 333-208521) and of Eiger's periodic reports filed with the SEC. Eiger does not assume any obligation to update any forward-looking statements, except as required by law.



SOURCE Eiger Bio, Inc.

Investors: Jim Shaffer, Eiger Bio, Inc., 919-345-4256, jshaffer@eigerbio.com

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Appendix 6

Documentation to be provided

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- 1 -

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Appendix 7

Form of Stock Purchase Agreement

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- 1 -

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Appendix 8

Exceptions to Section 9.2

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- 1 -

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Appendix 9

List of 'Knowledge' Individuals of BMS

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- 1 -

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Appendix 10

Reagents and Research Tools

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- 1 -

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Appendix 11

Third Party Agreements

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- 1 -

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EIGER BIOPHARMACEUTICALS, INC.

COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "**Agreement**") is made as of April 20, 2016 (the "**Execution Date**") by and between Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "**Company**"), and Bristol-Myers Squibb Company, a Delaware corporation (the "**Investor**").

RECITALS

WHEREAS, the Company and the Investor have entered into a License Agreement effective as of April 20, 2016 (the "**License Agreement**"); and

WHEREAS, in connection with the License Agreement, the Company shall issue to the Buyer shares of the Company's common stock, par value \$0.001 per share (the "**Common Stock**"), in such amount and upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, 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, in consideration for the license granted by the Buyer to the Company under the License Agreement and the other transactions contemplated thereby, the Company will issue to the Investor at the Closing the number of shares of Common Stock (the "**Shares**") calculated by dividing Three Million United States Dollars (\$3,000,000.00) (the "**Aggregate Purchase Price**") by a price per share equal to the volume weighted average price of common stock of the Company for the ten (10) Trading Days on the NASDAQ Stock Market ending on April 12, 2016. For purposes of this Agreement, "**Trading Day**" means any day on which the Common Stock is traded on Nasdaq, or, if Nasdaq is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; *provided that* "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time). Based on the above formula, the Company will issue to the Investor at the Closing 157,587 shares of Common Stock at a purchase price of \$19.04 per share.

1.2 **Closing.** The issuance of the Shares contemplated by Section 1.1 shall take place at a closing (the "**Closing**") to be held at the offices of Cooley LLP, 3175 Hanover Street, Palo Alto, California 94304, immediately following the satisfaction or waiver of each of the conditions set forth in Sections 4 and 5 hereof (other than those conditions that are to be satisfied at the Closing).

but subject to satisfaction or waiver of such conditions). At the Closing, the Company will deliver or cause to be delivered to the Investor a certificate or certificates representing the Shares being issued to the Investor pursuant to Section 1.1.

SECTION 2

Representations and Warranties of the Company

Except as set forth on the Schedule of Exceptions delivered by the Company to the Investor on the date hereof, the Company hereby represents and warrants the following as of the date hereof and as of the Closing. For purposes of these representations and warranties (other than those set forth in Sections 2.2, 2.4 and 2.5) the term “Company” includes any subsidiaries of the Company.

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 full corporate power and authority to conduct its business as presently conducted and as proposed to be conducted by it. The Company is duly qualified to do business as a foreign corporation in California and is in good standing under the laws of such State. The Company is not required to be qualified to do business as a foreign corporation in any other jurisdiction in which the failure so to qualify would have a material adverse effect on the business, prospects, assets or condition (financial or otherwise) of the Company (a “**Company Material Adverse Effect**”). The Company has furnished to the Investor complete and accurate copies of its Certificate of Incorporation and Bylaws, each as amended to date and presently in effect. The Company has at all times complied with all provisions of its Certificate of Incorporation and Bylaws and is not in default under, or in violation of, any such provision.

2.2 *Subsidiaries, Etc.* Except as set forth on the Schedule of Exceptions, the Company has no subsidiaries and does not own or control, directly or indirectly, any shares of capital stock of any other corporation or any interest in any partnership, limited liability company, joint venture or other non-corporate business enterprise.

2.3 *Authorization.* The execution, delivery and performance by the Company of this Agreement, and the consummation by the Company of the transactions contemplated hereby (including the issuance of the Shares), have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its respective terms. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby (including the issuance of the Shares) and the compliance with the provisions of this Agreement by the Company will not (a) conflict with or violate any provision of the Certificate of Incorporation or Bylaws of the Company, (b) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest (as defined below) or other arrangement to which the Company is a party or by which the Company is bound or to which its assets are subject, (c) result in the imposition of any Security Interest upon any assets of the Company or (d) violate any order, writ,

injunction, decree, statute, rule or regulation applicable to the Company or any of its properties or assets. For purposes of this Agreement, “**Security Interest**” means any mortgage, pledge, security interest, encumbrance, charge or other lien (whether arising by contract or by operation of law).

2.4 Valid Issuance of Shares. The issuance, sale and delivery of the Shares in accordance with this Agreement, has been, or will be on or prior to the Closing, duly authorized by all necessary corporate action on the part of the Company, and all such shares have been duly reserved for issuance. The Shares when so issued, sold and delivered against payment therefor in accordance with the provisions of this Agreement, will be duly and validly issued, fully paid and nonassessable, and free and clear of all Security Interests other than restrictions on transfer imposed or created under this Agreement or by applicable securities laws, and will not be subject to preemptive rights, rights of first refusal, purchase options, call options, subscription rights or other similar rights of stockholders of the Company or any other Person. For purposes of this Agreement, “**Person**” means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Entity (as defined in Section 2.9) or other entity.

2.5 Capitalization.

(a) The authorized capital stock of the Company as of the date of this Agreement consists of (i) 200,000,000 shares of Common Stock of which 6,942,061 shares are issued and outstanding and none are held in the treasury of the Company, and (ii) 10,000,000 shares of Preferred Stock, \$0.001 par value per share, of which no shares are issued and outstanding. All of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and nonassessable. All of the issued and outstanding shares of capital stock of the Company have been offered, issued and sold by the Company in compliance with all applicable federal and state securities laws.

(b) The Registration Statement (as defined in Section 2.18(d)(vi)) includes under the heading “Management Following the Merger–Employment Benefit Plans” a complete and accurate list, as of February 16, 2016: (i) all stock option plans and other stock or equity-related plans of the Company (the “**Company Stock Plans**”), indicating for each Company Stock Plan the number of shares of Common Stock issued to date under such Plan, the number of shares subject to outstanding options under such Plan and the number of shares reserved for future issuance under such Plan; (ii) all holders of outstanding options to purchase shares of Common Stock (“**Company Stock Options**”), indicating with respect to each Company Stock Option the Company Stock Plan under which it was granted, the number of shares of Common Stock subject to such Company Stock Option, the exercise price, the date of grant and the vesting schedule (including any acceleration provisions with respect thereto); and (iii) all holders of warrants or other rights (other than Company Stock Options and convertible preferred stock) to purchase or acquire shares of capital stock of the Company (collectively, the “**Company Warrants**”), indicating with respect to each Company Warrant the agreement or other document under which it was granted, the number of shares of capital stock, and the class or series of such shares, subject to such Company Warrant, the exercise price, the date of issuance and the expiration date thereof. The Company has furnished to the Investor complete and accurate copies of all Company Stock Plans, forms of all stock option agreements evidencing Company Stock Options and all Company Warrants. All of the shares of capital stock of the Company subject to Company Stock Options and Company Warrants will be, upon issuance pursuant to the exercise of such instruments, duly authorized, validly issued, fully paid and nonassessable.

(c) Except as set forth in the Schedule of Exceptions, (i) no subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any shares of capital stock of the Company is authorized or outstanding, (ii) the Company has no obligation (contingent or otherwise) to issue any subscription, warrant, option, convertible security or other such right, or to issue or distribute to holders of any shares of its capital stock, any evidences of indebtedness or assets of the Company, (iii) the Company has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock, or any interest therein or to pay any dividend or to make any other distribution in respect thereof, and (iv) there are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company. The issuance and sale of the Shares will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investor) and will not result in a right of any holder of the Company's securities to adjust the exercise, conversion, exchange or reset price under any of such securities.

(d) Except as set forth in the Registration Statement and Schedule of Exceptions, there is no agreement, written or oral, between the Company and any holders of its securities, or, to the best of the Company's knowledge, among any holder of its securities, relating to the sale or transfer (including without limitation agreements relating to rights of first refusal, co-sale rights or "drag along" rights), registration under the Securities Act of 1933, as amended (the "**Securities Act**"), or voting, of the capital stock of the Company.

(e) Except as otherwise contemplated by this Agreement, no Person has the right to (i) prohibit the Company from filing a Registration Statement or (ii) require the Company to register any securities for sale under the Securities Act by reason of the filing of a Registration Statement. The granting and performance of the registration rights under this Agreement will not violate or conflict with, or result in a breach of any provision of, or constitute a default under, any agreement, indenture, or instrument to which the Company is a party.

(f) The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act. The Company has taken no action designed to terminate the registration of the Common Stock under the Exchange Act and the Company has not received any notification that the United States Securities and Exchange Commission (the "**SEC**") is contemplating terminating such registration. The Common Stock is listed on The Nasdaq Global Market, and there are no proceedings pending or, to the knowledge of the Company, threatened to revoke or suspend such listing or the listing of the Shares. The Company is in compliance in all material respects with the requirements of Nasdaq for continued listing of the Common Stock thereon and any other Nasdaq listing and maintenance requirements.

2.6 SEC Reports; Financial Statements.

(a) The Company (including its predecessor, Celladon Corp.) has timely filed or furnished all reports, schedules, forms, statements and other documents required to be filed or furnished by it with the SEC since March 31, 2015, pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the Closing and all exhibits included therein and

financial statements and schedules thereto and documents (other than exhibits) incorporated by reference therein, together with the documents filed by the Company with the SEC pursuant to the requirements of the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (the “**Securities Act**”) prior to the Closing and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits), together referred to herein as the “**SEC Documents**”). As of their respective SEC filing dates, and only with respect to the SEC Documents filed by the Company pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), the SEC Documents complied in all material respects with the requirements of the Exchange Act and the applicable portions of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, including those filed pursuant to the Exchange Act and Securities Act, as of such respective dates (or, if amended prior to the date of this Agreement, the date of the filing of such amendment, with respect to the disclosures that are amended), contained (or with respect to any SEC Documents filed with the SEC after the date hereof and before the Closing will contain) any untrue statement of a material fact or omitted (or with respect to any SEC Documents filed with the SEC after the date hereof and before the Closing will omit) 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. True and complete copies of the SEC Documents are available for access by the Investor via the SEC’s EDGAR system.

(b) The Company has furnished to the Investor a complete and accurate copy of (a) the audited balance sheet of the Company at December 31, 2015 (the “**Balance Sheet Date**”) and the related audited statement of operations for the fiscal year then ended (collectively, the “**Financial Statements**”). As of their respective dates, the Financial Statements and the related notes complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. The Financial Statements and the related notes have been prepared in accordance with accounting principles generally accepted in the United States (“**GAAP**”), consistently applied, during the periods involved (except (i) as may be otherwise indicated in the Financial Statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes, may be condensed or summary statements, or may conform to the SEC’s rules and instructions for Reports on Form 10-Q) and fairly present in all material respects (or in the case of SEC Documents filed after the date hereof and prior to the Closing will fairly present in all material respects) the financial position of the Company as of the dates thereof and the results of its operations, retained earnings (loss), changes in financial position and cash flows, as the case may be, for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments).

(c) All material agreements that were required to be filed as exhibits to the SEC Documents under Item 601 of Regulation S-K (collectively, the “**Material Agreements**”) to which the Company is a party, or the property or assets of the Company is subject, have been filed (or in the case of SEC Documents filed after the date hereof and prior to the Closing will be filed) as exhibits to the SEC Documents. All Material Agreements are valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, and, to the knowledge of the Company, are valid and binding obligations of the other party thereto, enforceable against each other party thereto in accordance with its terms. The Company (A) is not, and has not

received written notice that it is, in breach of, or default under any, of the Material Agreements and (B) has not received written notice of termination nor is the Company aware of any threats to terminate any of the Material Agreements. To the knowledge of the Company, (x) no counterparty to any Material Agreement is, or is alleged to be, in default under or in breach or violation of any Material Agreement and (y) no event has occurred that with the lapse of time or giving notice or both would constitute a default under, or result in a breach or violation of, any Material Agreement by the Company (with or without notice or lapse of time or both).

(d) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

2.7 Material Adverse Change. Except as set forth in the Registration Statement and Schedule of Exceptions, since the Balance Sheet Date, there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not caused, in the aggregate, a Company Material Adverse Effect;

(b) any damage, destruction or loss, whether or not covered by insurance, that would have a Company Material Adverse Effect;

(c) any waiver or compromise by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim, or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and the satisfaction or discharge of which would not have a Company Material Adverse Effect;

(e) any material change to a material contract or agreement by which the Company or any of its assets is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee, officer, director or stockholder;

(g) any resignation or termination of employment of any officer or Key Employee of the Company;

(h) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable and liens that arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets;

(i) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(j) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase, or other acquisition of any of such stock by the Company;

(k) any purchase, redemption or any agreements made to purchase or redeem any shares of its capital stock, except issued pursuant to the Company's existing stock option plans;

(l) any issuance of any equity securities to any officer, director or affiliate, except issued pursuant to the Company's existing stock option or stock purchase plans or executive and director compensation arrangements disclosed in the SEC Documents;

(m) any sale, assignment or transfer of any Company Intellectual Property that could reasonably be expected to result in a Company Material Adverse Effect;

(n) any material change in its method of accounting or the manner in which it keeps its accounting books and records;

(o) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company; or

(p) any arrangement or commitment by the Company to do any of the things described in this Section 2.8.

2.8 No Undisclosed Liabilities. Except as set forth in the Schedule of Exceptions, the Company does not have any liability or obligation (whether known or unknown and whether accrued, absolute, contingent or otherwise) which would be required to be reflected or reserved against on the balance sheet of the Company prepared in accordance with GAAP or the notes thereto, except for (a) liabilities shown expressly, or included in amounts shown, on the Balance Sheet, (b) liabilities less than \$250,000 on an individual basis, which have arisen since the Balance Sheet Date in the ordinary course of business and which are similar in nature and amount to the liabilities which arose during the comparable period of time in the immediately preceding fiscal period and (c) contractual liabilities incurred in the ordinary course of business which are not required by GAAP to be reflected on a balance sheet and which would not, either individually or in the aggregate, have or result in a Company Material Adverse Effect.

2.9 Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority or agency (each of the foregoing is hereafter referred to as a "**Governmental Entity**") is required on the part of the Company in connection with the offer, issuance, sale and delivery of the Shares or to execute, deliver or perform any of its obligations under this Agreement, in each case as contemplated by this Agreement, except (i) any filings required to be made after the Closing under applicable federal and state securities laws and (ii) any required filings or notifications regarding the issuance or listing of

the Shares with Nasdaq. Based on the representations made by the Investor in Section 3 of this Agreement, the offer and sale of the Shares to the Investor will be in compliance with applicable federal and state securities laws.

2.10 Actions Pending. There is no action, suit or proceeding, or governmental inquiry or investigation, pending, or, to the best of the Company's knowledge, any basis therefor or threat thereof, against the Company or any officer, director or Key Employee of the Company, which questions the validity of this Agreement or the right of the Company to enter into such agreement or to consummate the transactions contemplated hereby. There is no litigation pending, or, to the best of the Company's knowledge, any basis therefor or threat thereof, against the Company or any of its employees by reason of the past employment relationships of any of the employees, the proposed activities of the Company, or negotiations by the Company with possible investors in the Company. The Company is not subject to any outstanding judgment, order or decree.

2.11 Foreign Corrupt Practices Act, OFAC and Anti-Money Laundering.

(a) None of the Company, its subsidiaries or, to the knowledge of the Company, any of the Company's directors, officers, employees or agents has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and its subsidiary have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(b) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, or Person acting on behalf of the Company or any subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"), and the Company will not directly or indirectly use the proceeds of the sale of the Shares, or lend, contribute or otherwise make available such proceeds to any subsidiary or other Person or entity, towards any sales or operations in Cuba, Iran, Syria, Sudan, Myanmar or any other country sanctioned by OFAC or for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

(c) The operation of each of the Company and its subsidiaries are and have been conducted at all times in compliance with the money laundering statutes of applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any applicable governmental agency (collectively, the "**Money Laundering Laws**"), and no action suit or proceeding by or before any court of governmental agency, authority or body or any arbitrator involving the Company and/or any subsidiary with respect to the Money Laundering Laws is pending, or to the Company's knowledge, threatened.

2.12 Compliance with Law. The Company has, in all material respects, complied with all laws, regulations and orders applicable to its present and proposed business and has all material permits and licenses required thereby. There is no term or provision of any mortgage, indenture, contract, agreement or instrument to which the Company is a party or by which it is bound, or, to the best of the Company's knowledge, of any provision of any state or federal judgment, decree, order, statute, rule or regulation applicable to or binding upon the Company, which materially adversely affects or, so far as the Company may now foresee, in the future is reasonably likely to materially adversely affect the Company. To the best of the Company's knowledge, no employee of the Company is in violation of any term of any contract or covenant (either with the Company or with another entity) relating to employment, patents, assignment of inventions, proprietary information disclosure, non-competition or non-solicitation.

2.13 Exemption from Registration; Valid Issuance. Subject to, and in reliance on, the representations, warranties and covenants made herein by the Investor, 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, Regulation D promulgated pursuant to the 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 Security Interest upon the Shares or any of the assets of the Company, or (ii) except as set forth in Section 2.13 of the Schedule of Exceptions, 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. Neither the Company nor, to the Company's knowledge, any Person acting on behalf of the Company has offered or sold any of the Shares by means of any form of general solicitation or general advertising.

2.14 Taxes.

(a) For purposes of this Agreement: (i) "**Tax**" or "**Taxes**" means all taxes, charges, fees, levies or other similar assessments or liabilities, including without limitation income, gross receipts, ad valorem, premium, value-added, excise, real property, personal property, sales, use, transfer, withholding, employment, unemployment insurance, social security, business license, business organization, environmental, workers compensation, payroll, profits, license, lease, service, service use, severance, stamp, occupation, windfall profits, customs, duties, franchise and other taxes imposed by the United States of America or any state, local or foreign government, or any other Governmental Entity, and any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax or any contest or dispute thereof, and any liability for the payment of the foregoing as a result of being a member of an affiliated, combined, consolidated or unitary group for any period, as a result of any tax sharing or tax allocation agreement, arrangement or understanding, or as a result of being liable for another Person's taxes as a transferee or successor, by contractual obligation or otherwise; and (ii) "**Tax Returns**" means all reports, returns, declarations, statements or other information, including any schedule or attachment thereto, required to be supplied to a taxing authority in connection with Taxes and any amendment thereof.

(b) The amount shown on the Balance Sheet as provision for Taxes is sufficient in all material respects for the payment of all unpaid Taxes, whether or not disputed, for all

periods ending on or before the date thereof. The Company has timely filed or obtained presently effective extensions with respect to all Tax Returns that are or were required to be filed by it, and such Tax Returns are complete and accurate in all material respects. All Taxes have been timely paid, whether or not shown on such Tax Returns. All Taxes that the Company is or was required by law to have withheld or collected have been duly withheld or collected and, to the extent required, have been timely paid to the proper Governmental Entity, and the Company has complied with all related recordkeeping requirements. The Tax Returns of the Company have not been audited by any Governmental Entity, the Company has not agreed to any waivers of statutes of limitations with respect to Taxes, and no controversy with respect to Taxes is pending or, to the best of the Company's knowledge, threatened. No claim has ever been made by any Governmental Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction, and, to the Company's knowledge, there is no basis for any such claim to be made. Neither the Company nor any of its stockholders has ever filed an election pursuant to Section 1362 of the Internal Revenue Code of 1986, as amended (the "**Code**"), that the Company be taxed as an S corporation. The Company's net operating losses, as set forth in the Financial Statements, are not subject to any limitations imposed by Section 382 of the Code or comparable provisions of state, local, or foreign law, and consummation of the transactions contemplated by this Agreement or by any other agreement, understanding or commitment, contingent or otherwise, to which the Company is a party or by which it is otherwise bound will not have the effect of limiting the Company's ability to use such net operating losses in full to offset taxable income. The Company does not have any liabilities for Taxes of any other Person or entity by contract, as a transferee or successor, under U.S. Treasury Regulation section 1.1502-6 or analogous state, county, local or foreign provision or otherwise.

(c) The Company is not now and has never been a "United States real property holding corporation" as defined in Section 897(c)(2) of the Code and the Treasury Regulations thereunder.

2.15 **Investment Company.** The Company is not an investment company within the meaning of the Investment Company Act of 1940, as amended.

2.16 **Brokers.** 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, and neither the Company nor any of its subsidiaries has taken no action that would give rise to any claim by any Person for brokerage commissions, placement agent's fees or similar payments relating to this Agreement or the transactions contemplated hereby.

2.17 **Property and Assets.** The Company has good title to, or a valid leasehold interest in, all of its material properties and assets, including all properties and assets reflected in the Balance Sheet, except those disposed of since the date thereof in the ordinary course of business, and none of such properties or assets is subject to any Security Interest other than those the material terms of which are described in the Balance Sheet or in the Schedule of Exceptions.

2.18 **Intellectual Property.**

(a) To the best of the Company's Knowledge, the Company is the owner, licensee or has the right to use all Company Intellectual Property (as defined below) necessary to

research, develop, use, manufacture, market and sell its Product Candidates. The Company has taken all reasonable measures to protect the proprietary nature of each item of Company Intellectual Property (as defined below), and to maintain in confidence all trade secrets and confidential information, that it owns or uses. To the best of the Company's Knowledge, (i) the patents and patent applications that constitute Company Intellectual Property have been prepared, filed and prosecuted in accordance with all applicable laws and regulations and (ii) any issued patents that constitute Company Intellectual Property are valid or enforceable. To the best of the Company's Knowledge, no other Person has any rights to any of the Company Intellectual Property owned by the Company (except pursuant to agreements or licenses specified in the Schedule of Exceptions), and no other Person is infringing, violating or misappropriating any of the Company Intellectual Property. To the Company's Knowledge, there are no pending or threatened legal or governmental proceedings relating to any Company Intellectual Property, other than ex parte examination proceedings before the US Patent and Trademark Office or ex parte examination proceedings or oppositions before corresponding foreign patent offices.

(b) To the Company's Knowledge, as of the date of this Agreement, none of the Product Candidates, or the research, development, manufacture, marketing, sale, offer to sell, importation, provision or use thereof, infringes or would infringe, or violates or would violate, or constitutes or would constitute a misappropriation of, any Intellectual Property rights of any Person. The Schedule of Exceptions lists any complaint, claim or notice, or written threat thereof, received by the Company alleging any such infringement, violation or misappropriation; and the Company has provided to the Investor complete and accurate copies of all written documentation in the possession of the Company relating to any such complaint, claim, notice or threat.

(c) All of the copyrightable materials incorporated in, underlying or used with the Company Intellectual Property have been created by employees of the Company within the scope of their employment by the Company or by independent contractors of the Company who have executed agreements expressly assigning all right, title and interest in such copyrightable materials to the Company. No portion of such copyrightable materials was jointly developed with any third party.

(d) For purposes of this Agreement (except for the knowledge definition below, which shall be applicable solely to this Section 2.18), the following terms shall have the following meanings:

(i) "**Company Intellectual Property**" shall mean the Intellectual Property owned by or licensed to the Company and incorporated in, underlying or used in connection with the Product Candidates, including, without limitation, the patent and trademark rights identified in the Schedule of Exceptions.

(ii) "**Intellectual Property**" shall mean all: (A) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility model, certificate of invention and design patents, patent applications, registrations and applications for registrations; (B) trademarks, service marks, trade dress, Internet domain names, logos, trade names and corporate names and registrations and applications for registration thereof; (C) copyrights and registrations and applications for registration thereof; (D) computer software, data and documentation; (E) inventions, trade secrets and confidential business

information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, formulae, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information; (F) other proprietary rights relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions); and (G) copies and tangible embodiments thereof.

(iii) “**Key Employees**” shall mean the following officers: Chief Executive Officer, Chief Financial Officer and Chief Business Officer of the Company.

(iv) “**Knowledge**,” including the phrase “**to the Company’s Knowledge**,” shall mean the actual knowledge after reasonable investigation of the Key Employees.

(v) “**Product Candidates**” shall mean the product candidates identified and described in that certain Registration Statement.

(vi) “**Registration Statement**” shall mean that certain Registration Statement on Form S-4 filed December 14, 2015, as amended.

2.19 **Insurance.** The Company maintains valid policies of workers’ compensation insurance and of insurance with respect to its properties and business of the kinds and in the amounts not less than is customarily obtained by corporations of established reputation engaged in the same or similar business and similarly situated, including, without limitation, insurance against loss, damage, fire, theft, public liability and other risks.

2.20 **Employees.**

(a) All current and former employees of the Company have executed and delivered confidential information and inventions assignments agreements, and all of such agreements are in full force and effect. All current and former consultants of the Company that have performed development work or provided technical services to the Company or have otherwise had access to confidential or proprietary information of the Company have executed and delivered non-disclosure and assignment of inventions agreements, and all of such agreements are in full force and effect.

(b) The Company is not aware that any employee of the Company has plans to terminate his or her employment relationship with the Company. The Company has complied in all material respects with all applicable laws relating to wages, hours, equal opportunity, collective bargaining, workers’ compensation insurance and the payment of social security and other Taxes. None of the employees of the Company is represented by any labor union, and there is no labor strike or other labor trouble pending with respect to the Company (including, without limitation, any organizational drive) or, to the best of the Company’s knowledge, threatened. The Schedule of Exceptions sets forth a list of all agreements between any officer of the Company and a previous employer of such person that contains non-competition or non-solicitation covenants. The Company has furnished to the Investor copies of such agreements. To the Company’s knowledge, no employee of the Company is obligated under any contract or subject to any judgment, decree or

administrative order that would conflict or interfere with (i) the performance of the employee's duties as an employee, director or officer of the Company, or (ii) the Company's business as conducted or proposed to be conducted.

2.21 **ERISA.** Except as set forth in Section 2.21 of the Schedule of Exceptions, the Company does not have or otherwise contribute to or participate in any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended, other than a medical benefit plan with respect to which the Company has made all required contributions and has complied with all applicable laws.

2.22 **Environmental Matters.**

(a) The Company has complied with all applicable Environmental Laws (as defined below). There is no pending or, to the best of the Company's knowledge, threatened civil or criminal litigation, written notice of violation, formal administrative proceeding, or investigation, inquiry or information request by any Governmental Entity, relating to any Environmental Law involving the Company. For purposes of this Agreement, "**Environmental Law**" shall mean any federal, state or local law, statute, rule or regulation or the common law relating to the environment or occupational health and safety, including any statute, regulation, administrative decision or order pertaining to (i) treatment, storage, disposal, generation and transportation of industrial, toxic or hazardous materials or substances or solid or hazardous waste; (ii) air, water and noise pollution; (iii) groundwater and soil contamination; (iv) the release or threatened release into the environment of industrial, toxic or hazardous materials or substances, or solid or hazardous waste, including emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants or chemicals; (v) the protection of wildlife, marine life and wetlands, including all endangered and threatened species; (vi) storage tanks, vessels, containers, abandoned or discarded barrels and other closed receptacles; (vii) health and safety of employees and other Persons; and (viii) manufacturing, processing, using, distributing, treating, storing, disposing, transporting or handling of materials regulated under any law as pollutants, contaminants, toxic or hazardous materials or substances or oil or petroleum products or solid or hazardous waste. As used above, the terms "**release**" and "**environment**" shall have the meaning set forth in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), provided that the term "**release**" shall not include the definitional exclusions of CERCLA and the term "**environment**" shall not include the United States jurisdictional limitations of CERCLA and shall include the indoor environment.

(b) The Company has no liabilities or obligations arising from the release of any Materials of Environmental Concern (as defined below) into the environment. For purposes of this Agreement, "**Materials of Environmental Concern**" shall mean any chemicals, pollutants or contaminants, hazardous substances (as such term is defined under CERCLA), solid wastes and hazardous wastes (as such terms are defined under the Resource Conservation and Recovery Act), toxic materials, oil or petroleum and petroleum products or any other material subject to regulation under any Environmental Law.

(c) The Company is not a party to or bound by any court order, administrative order, consent order or other agreement between the Company and any Governmental Entity entered into in connection with any legal obligation or liability arising under any Environmental Law.

(d) The Company is not aware of any material environmental liability of any solid or hazardous waste transporter or treatment, storage or disposal facility that has been used by the Company.

SECTION 3

Representations and Warranties of the Investor

The Investor hereby represents and warrants the following as of the date hereof and as of the Closing:

3.1 **Experience.** The Investor has carefully reviewed the representations concerning the Company and the Shares contained in this Agreement and has sufficient knowledge and experience in finance and business that it is capable of evaluating the risks and merits of its investment in the Company and the Investor is able financially to bear the risks thereof.

3.2 **Investment.** The Investor is acquiring the Shares for investment for the Investor's own account and not with a present view to, or for resale in connection with, any distribution thereof. The Investor understands that the Shares are being issued in a transaction that has 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. Except in accordance with the provisions of Section 7 or pursuant to and in accordance with the Securities Act, the 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.** The Investor acknowledges that the Shares must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available. The Investor is aware of the provisions of Rule 144 promulgated under the Securities Act, or any successor rule ("**Rule 144**") which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions. In connection therewith, the Investor acknowledges that the Company will make a notation on its stock books regarding the restrictions on transfers set forth in Section 3.2 and this Section 3.3 and will transfer the Shares on the books of the Company only to the extent not inconsistent therewith.

3.4 **Access to Information.** Subject to the accuracy of the Company's representations and warranties in Section 2, the Investor has received or has had access to information about the Company and has had an opportunity to discuss the Company's business, management and financial affairs with its management. The 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. In connection with the purchase of the Shares hereunder, the 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.

3.5 **Authorization.** The Investor has full power and authority to enter into and to perform this Agreement in accordance with its terms. The Investor represents that it has not been organized, reorganized or recapitalized specifically for the purpose of investing in the Company. This Agreement has been duly executed and delivered by the Investor and constitutes a valid and binding obligation of the Investor enforceable against the Investor in accordance with their respective terms.

3.6 **Investor Status.** The Investor acknowledges that it is an institutional “accredited investor” as defined in Rule 501(a) of Regulation D of the Securities Act (an “**Institutional Accredited Investor**”).

3.7 **Bad Actors Matters.** Neither the Investor nor, to the Investor’s knowledge, any of its officers, directors or other affiliates covered under Rule 506(d)(1) promulgated under the Securities Act meet any of the disqualifying criteria described in Rule 506(d)(1)(i) through (viii) promulgated under the Securities Act.

3.8 **No Inducement.** The 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.

3.9 **Legends.** The Investor understands the certificates representing the Shares will bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such Shares):

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

SECTION 4

Conditions to Investor’s Obligations at Closing

The obligations of the 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 the Investor (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 have been 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 such date, except to the extent expressly made as of a specified date, which shall be true and correct as of such 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.

4.4 Compliance Certificate. A duly authorized officer of the Company shall deliver to the Investor 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 authorizing Board of Directors resolutions with respect to this Agreement and the transactions contemplated hereby.

4.5 Securities Laws. The offer and sale of the Shares to the Investor 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 Effective Date. The License Agreement remains in full force and effect.

SECTION 5

Conditions to the Company's Obligations at Closing

The obligations of the Company to the Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by the Investor:

5.1 Representations and Warranties. The representations and warranties of the 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 Investor 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 **Authorization.** 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 **Effective Date.** The License Agreement remains in full force and effect.

SECTION 6

Covenants

6.1 Reporting Status. The Common Stock is registered under Section 12 of the Exchange Act. During the Registration Period (as defined in Section 7.3(a)), the Company will timely file with the SEC all quarterly and annual reports and other information, documents and reports that are required to be filed with the SEC pursuant to Section 13 of the Exchange Act, and the Company agrees that it will not voluntarily terminate, or voluntarily act or fail to act in a manner that would permit another Person to terminate, the Company's status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination.

6.2 Expenses. Except as otherwise contemplated by this Agreement, the Company and the Investor are liable for, and will pay, their own expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement, including attorneys' and consultants' fees and expenses.

6.3 Financial Information. The financial statements of the Company to be included in any documents filed with the SEC will be prepared in accordance with GAAP, consistently applied, during the periods involved (except (i) as may be otherwise indicated in the Financial Statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes, may be condensed or summary statements, or may conform to the SEC's rules and instructions for Reports on Form 10-Q) and will fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations, retained earnings (loss), changes in financial position and cash flows, as the case may be, for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments).

6.4 Securities Laws Disclosure. On or before the fourth (4th) Business Day following the Effective Date, the Company shall file a Current Report on Form 8-K with the SEC describing the terms of the transactions contemplated by this Agreement and the License Agreement. The Company shall provide the Investor an opportunity to review and comment on the disclosure to be included in such Current Report on Form 8-K; *provided, however*, that the Investor's consent shall not be required to file such Current Report on Form 8-K (including the exhibits filed therewith).

6.5 Sales by the Investor. In the event of a decision by the Investor to sell any Shares held by it, the Investor will sell such Shares in compliance with applicable prospectus delivery requirements, if any, or otherwise in compliance with the requirements for an exemption from registration under the Securities Act and the rules and regulations promulgated thereunder. The Investor will not make any sale, transfer or other disposition of the Shares in violation of federal or state securities laws.

6.6 Form D; Blue Sky Filings. The Company agrees to file a Form D with respect to the Shares as required under Regulation D of the Securities Act. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption from, or to qualify the Shares for, sale to the Investor at the Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States, and shall provide evidence of such actions promptly upon the written request of the Investor.

6.7 Further Actions. Each of the Company and the Investor agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as are reasonably necessary to carry out the purposes and intent of this Agreement.

SECTION 7

Registration Rights

7.1 Registration Demand Rights.

(a) The Company currently is, and during the Registration Period (as defined below) shall use its best efforts to remain, qualified under the Securities Act for registration of its shares of Common Stock on Form S-3 or any comparable or successor form or forms (the “**S-3 Registration Statement**”). At any time after the Company has qualified for the use of Form S-3, the Investor shall have the right during the Registration Period to request registration on Form S-3 of any Shares held by it (such requests shall be in writing and shall state the number of Shares to be disposed of).

(b) The Company shall not be obligated to effect any registration under Section 7.1(a) if (and only if):

(i) the Investor proposes to sell Shares on Form S-3 at an aggregate price to the public of less than \$1,000,000; or

(ii) in the good faith judgment of the Board of Directors of the Company (the “**Board**”), the Board concludes that it is essential to defer the filing of such registration statement at such time because such registration would (1) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (2) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (3) render the Company unable to comply with requirements under the Securities Act or Exchange Act.

If the Company refuses to effect the registration pursuant to Section 7.1(b)(ii), the Company shall furnish to the Investor a certificate signed by the Chief Executive Officer of the Company stating that in the good faith judgment of the Board, it would be materially detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, essential to defer the filing of such registration statement. The Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Investor, provided that the Company shall not defer its obligation in this manner more than twice in any twelve (12) month period.

(c) The Company shall as soon as practicable following its receipt of a request from the Investor under Section 7.1(a) file and use its commercially reasonable efforts to effect such registration (including filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) and to permit or facilitate the sale and distribution by the Investor of all or such portion of such Shares as are specified in such request.

7.2 The Company shall bear all expenses incurred by the Company in complying with Section 7.1 including all registration, qualification and filing fees, printing expenses, escrow fees, fees and expenses of the Company's counsel, blue sky fees and expenses and the expense of any special audit incident to or required by any such registration. The Investor shall bear all selling commissions and fees and expenses of legal counsel relating to the sale of Shares registered by or on behalf of the Investor.

7.3 In the case of the registration, qualification, exemption or compliance effected by the Company pursuant to this Agreement, the Company shall, upon reasonable request, inform the Investor as to the status of such registration, qualification, exemption and compliance. At its expense the Company shall:

(a) except for such times as the Company is permitted hereunder to suspend the use of the prospectus forming part of the S-3 Registration Statement, use its commercially reasonable efforts to keep such registration, and any qualification, exemption or compliance under state securities laws that the Company determines to obtain, continuously effective with respect to the Investor, and to keep the S-3 Registration Statement free of any material misstatements or omissions, until the earlier of the following: (i) the second anniversary of the effective date of the S-3 Registration Statement and (ii) the date all Shares held by the Investor may be sold without restriction under Rule 144, including any volume and manner of sale restrictions that may be applicable to affiliates under Rule 144. The period of time during which the Company is required hereunder to keep a S-3 Registration Statement effective is referred to herein as the "**Registration Period**".

(b) advise the Investor within three (3) Business Days:

(i) when a S-3 Registration Statement or any amendment thereto has been filed with the SEC and when the S-3 Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to the S-3 Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of the S-3 Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) of the occurrence of any event that requires the making of any changes in the S-3 Registration Statement or prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading;

(c) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of the S-3 Registration Statement as soon as reasonably practicable;

(d) if the Investor so requests in writing, promptly furnish to the Investor, without charge, at least one copy of the S-3 Registration Statement and each post-effective amendment thereto, including financial statements and schedules;

(e) during the Registration Period, promptly deliver to the Investor, without charge, as many copies of each prospectus included in the S-3 Registration Statement and any amendment or supplement thereto as the Investor may reasonably request in writing; and the Company consents to the use, consistent with the provisions hereof, of the prospectus or any amendment or supplement thereto by the Investor in connection with the offering and sale of the Shares covered by a prospectus or any amendment or supplement thereto;

(f) during the Registration Period, if the Investor so requests in writing, deliver to the Investor, without charge, one copy of the following documents, other than those documents available via the SEC's EDGAR system: (i) its annual report to its stockholders, if any (which annual report shall contain financial statements audited in accordance with GAAP by a firm of certified public accountants of recognized standing), (ii) if not included in substance in its annual report to stockholders, its annual report on Form 10-K (or similar form), (iii) its definitive proxy statement with respect to its annual meeting of stockholders, (iv) each of its quarterly reports to its stockholders, and, if not included in substance in its quarterly reports to stockholders, its quarterly report on Form 10-Q (or similar form), and (v) a copy of the S-3 Registration Statement (the foregoing, in each case, excluding exhibits);

(g) prior to any public offering of Shares pursuant to the S-3 Registration Statement, promptly take such actions as may be necessary to register or qualify or obtain an exemption for offer and sale under the securities or blue sky laws of such United States jurisdictions as the Investor reasonably request in writing, *provided* that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction, and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Shares covered by the S-3 Registration Statement;

(h) upon the occurrence of any event contemplated by Section 7.3(b)(v), except for such times as the Company is permitted hereunder to suspend, and has suspended, the use of a prospectus forming part of the S-3 Registration Statement, the Company shall use its commercially reasonable efforts to as soon as reasonably practicable prepare a post-effective amendment to such S-3 Registration Statement or a supplement to the related prospectus, or file any other required document so that, as thereafter delivered to purchasers of the Shares included therein, such prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(i) otherwise use its commercially reasonable efforts to comply in all material respects with all applicable rules and regulations of the SEC that could affect the sale of the Shares;

(j) use its commercially reasonable efforts to cause all Shares to be listed on each securities exchange or market, if any, on which equity securities issued by the Company have been listed;

(k) use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Shares contemplated hereby and to enable the Investor to sell Shares under Rule 144;

(l) permit counsel for the Investor to review any S-3 Registration Statement and all amendments and supplements thereto, within five (5) Business Days prior to the filing thereof with the SEC; provided that, in the case of Section 7.3(m), the Company shall not be required (i) to delay the filing of the S-3 Registration Statement or any amendment or supplement thereto as a result of any ongoing diligence inquiry by or on behalf of the Investor or to incorporate any comments to any S-3 Registration Statement or any amendment or supplement thereto by or on behalf of the Investor if such inquiry or comments would require a delay in the filing of such S-3 Registration Statement, amendment or supplement, as the case may be, or (ii) to provide, and shall not provide, the Investor or its representatives with material, non-public information unless the Investor agrees to receive such information and enters into a written confidentiality agreement with the Company in a form reasonably acceptable to the Company; and

(m) if requested by the Investor, cooperate with the Investor to facilitate the timely preparation and delivery of certificates representing Shares to be delivered to a transferee pursuant to the S-3 Registration Statement, which certificates shall be free, to the extent permitted by this Agreement and under law, of all restrictive legends, and to enable such Shares to be in such denominations and registered in such names as the Investor may reasonably request.

7.4 To the extent the resale of the Shares is registered under the Securities Act pursuant to an effective Registration Statement, the Company agrees to promptly (a) authorize the removal of the legend set forth in Section 3.9 and any other legend not required by applicable law from such Shares and (b) cause its transfer agent to issue such Shares without such legends to the holders thereof by electronic delivery at the applicable balance account at the American Stock Transfer &

Trust Company, LLC (“AST”) upon surrender of any stock certificates evidencing such Shares. With respect to any Shares for which restrictive legends are removed pursuant to Section 7.5, the Investor agrees to only sell such Shares when and as permitted by the effective Registration Statement covering such resale and in accordance with applicable securities laws and regulations. Any fees (with respect to the Company’s transfer agent, counsel or otherwise) associated with the removal of such legend(s) shall be borne by the Company.

7.5 The Investor may request that the Company remove, and the Company agrees to authorize the removal of any legend from the Shares (i) following any sale of the Shares pursuant to Rule 144, or (ii) if such Shares are eligible for sale under Rule 144 following the expiration of the six-month holding requirement under subparagraphs (b)(1)(i) and (d) thereof. Following the time a legend is no longer required for the Shares under this Section 7.5, the Company will, no later than five (5) Business Days following the delivery by the Investor to the Company or the Company’s transfer agent of a legended certificate representing such securities (such date being the “**Legend Removal Date**”), (A) deliver or cause to be delivered to the Investor a certificate representing such securities that is free from all restrictive and other legends or (B) at the request of the Investor, cause its transfer agent to issue such Shares without such legends to the Investor by electronic delivery at the applicable balance account at the AST. The failure to timely deliver certificates without restrictive legends by the Legend Removal Date shall not be a breach of the foregoing covenant if such delay is solely due to the action or inaction of the Company’s transfer agent and if the Company has taken reasonable steps necessary to facilitate the removal of such legends. Certificates for the Shares subject to legend removal hereunder may be transmitted by the Company’s transfer agent to the Investor by crediting the account of the Investor’ prime broker with AST as directed by the Investor.

7.6 The Investor shall have no right to take any action to restrain, enjoin or otherwise delay any registration pursuant to Section 7.1 as a result of any controversy that may arise with respect to the interpretation or implementation of this Agreement.

7.7 Suspension of Disposition; Certain Covenants.

(a) The Investor agrees that, upon receipt of any notice from the Company of the happening of any event requiring the preparation of a supplement or amendment to a prospectus relating to Shares so that, as thereafter delivered to the Investor, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Investor will forthwith discontinue disposition of Shares pursuant to the Registration Statement and prospectus contemplated by Section 7.1 until its receipt of copies of the supplemented or amended prospectus from the Company and, if so directed by the Company, the Investor shall deliver to the Company all copies, other than permanent file copies then in the Investor’ possession, of the prospectus covering such Shares current at the time of receipt of such notice.

(b) The Investor shall suspend, upon request of the Company, any disposition of Shares pursuant to the Registration Statement and prospectus contemplated by Section 7.1 during no more than two (2) periods of no more than ninety (90) calendar days each during any twelve (12) month period to the extent that the Board determines in good faith that the sale of Shares under any the Registration Statement would be reasonably likely to cause a violation of the Securities Act or Exchange Act.

(c) As a condition to the inclusion of its Shares in the Registration Statement, the Investor shall furnish to the Company such information regarding the Investor and the distribution proposed by the Investor as the Company may reasonably request in writing, including completing a Registration Statement Questionnaire in the form provided by the Company or in a mutually agreeable form, or as shall be required in connection with any registration referred to in this Section 7.

(d) The Investor hereby covenants with the Company (i) not to make any sale of the Shares under the Registration Statement without effectively causing the prospectus delivery requirements under the Securities Act to be satisfied, and (ii) if such Shares are to be sold by any method or in any transaction other than on a national securities exchange or in the over-the-counter market, in privately negotiated transactions, or in a combination of such methods, to notify the Company at least three (3) Business Days prior to the date on which the Investor first offers to sell any such Shares.

(e) The Investor agrees not to take any action with respect to any distribution deemed to be made pursuant to the Registration Statement that would constitute a violation of Regulation M under the Exchange Act or any other applicable rule, regulation or law.

(f) At the end of the Registration Period the Investor shall discontinue sales of Shares pursuant to the Registration Statement upon receipt of notice from the Company of its intention to remove from registration the Shares covered by the Registration Statement that remain unsold, and the Investor shall notify the Company of the number of Shares registered that remain unsold immediately upon receipt of such notice from the Company.

7.8 With a view to making available to the Investor the benefits of certain rules and regulations of the SEC that at any time permit the sale of the Shares to the public without registration, so long as the Investor still own Shares, the Company shall use its reasonable best efforts to:

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

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

7.9 The rights of the Investor under any provision of this Section 7 may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) or amended only by an instrument in writing signed by the Investor.

SECTION 8

Indemnification

8.1 To the extent permitted by law, the Company shall indemnify the Investor and each Person who controls the Investor within the meaning of Section 15 of the Securities Act, with respect to any registration that has been effected pursuant to this Agreement, and hold them harmless against all claims, losses, liabilities, costs, damages, deficiencies, assessments, fines, judgments, fees, costs or expenses (including reasonable legal fees and expenses and other out-of-pocket costs incurred in investigating, preparing and defending the foregoing) (collectively, "**Losses**"), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 8.4), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in the S-3 Registration Statement, prospectus, any amendment or supplement thereof, or other document prepared by the Company and incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, or any violation by the Company of any rule or regulation promulgated under the Securities Act applicable to the Company and relating to any action or inaction required of the Company in connection with any such registration, qualification or compliance, and will reimburse the Investor and each Person controlling the Investor, for reasonable legal and other out-of-pocket expenses reasonably incurred in connection with investigating or defending any such Loss or action as incurred; *provided, however*, that the Company will not be liable: (a) in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Investor for use in preparation of the S-3 Registration Statement, prospectus, amendment or supplement; or (b) in any such case to the extent that the Loss arises out of or is related to the failure of the Investor to comply with the covenants and agreements contained in this Agreement respecting the offer and sales of Shares, and provided further that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time the S-3 Registration Statement becomes effective or in an amended prospectus filed with the SEC pursuant to Rule 424(b) of the Securities Act that meets the requirements of Section 10(a) of the Securities Act (each, a "**Final Prospectus**"), such indemnity shall not inure to the benefit of the Investor, if a copy of a Final Prospectus was furnished by the Company to the Investor at or prior to the time the Investor is required under the Securities Act to furnish a prospectus to the Person asserting the Loss and such Final Prospectus was not furnished by the Investor to such Person and the Final Prospectus would have cured the defect giving rise to such Loss.

8.2 The Investor will indemnify the Company, each of its directors and officers, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, and hold them harmless against all Losses, including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 8.3), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in the S-3 Registration Statement, prospectus, or any amendment or supplement thereof, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, and each

Person controlling the Company for reasonable legal and any other expenses reasonably incurred in connection with investigating or defending any Loss or action as incurred, in each case to the extent, but only to the extent, that such untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Investor for use in preparation of the S-3 Registration Statement, prospectus, amendment or supplement. Notwithstanding the foregoing, the Investor's aggregate liability pursuant to this Section 8.2 and Section 8.3 shall be limited to the net amount actually received by the Investor from the sale of the Shares.

8.3 In addition to the respective rights and obligations of the parties under Sections 8.1 and 8.2, each party (an "**Indemnifying Party**") hereby indemnifies and holds harmless the other party, such other party's respective officers, directors, employees, consultants, representatives and advisers, and any and all affiliates of the foregoing (each of the foregoing, an "**Indemnified Party**") from and against all Losses suffered or incurred by any such Indemnified Party to the extent arising from or related to Third Party claims for: (i) breach of any representation or warranty of such Indemnifying Party in this Agreement; and (ii) breach of any covenant or undertaking of any Indemnifying Party in this Agreement. If an event or omission (including, without limitation, any claim asserted or action or proceeding commenced by a third party) occurs which an Indemnified Party asserts to be an indemnifiable event pursuant to this Section 8, the Indemnified Party will provide written notice to the Indemnifying Party, setting forth the nature of the claim and the basis for indemnification under this Agreement. The Indemnified Party will give such written notice to the Indemnifying Party promptly after it becomes aware of the existence of any such event or occurrence. Such notice will be a condition precedent to any obligation of the Indemnifying Party to act under this Agreement but will not relieve it of its obligations under the indemnity except to the extent that the failure to provide prompt notice as provided in this Agreement materially prejudices the Indemnifying Party with respect to the transactions contemplated by this Agreement and to the defense of the liability. In case any such action is brought by a third party against any Indemnified Party and it notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party will be entitled to participate therein and, to the extent that it wishes, to assume the defense and settlement thereof with counsel reasonably selected by it (and reasonably acceptable to the Indemnified Party) and, after written notice from the Indemnifying Party to the Indemnified Party of such election so to assume the defense and settlement thereof, the Indemnifying Party will not be liable to the Indemnified Party for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof, provided, however, that an Indemnified Party shall have the right to employ separate counsel at the expense of the Indemnifying Party if (i) the employment thereof has been specifically authorized in writing by the Indemnifying Party; or (ii) representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interests between such parties (which such judgment shall be made in good faith after consultation with counsel). The Indemnified Party agrees to cooperate fully with (and to provide all relevant documents and records and make all relevant personnel available to) the Indemnifying Party and its counsel, as reasonably requested and at the cost and expense of the Indemnifying Party, in the defense of any such asserted claim. No Indemnifying Party will consent to the entry of any judgment or enter into any settlement with respect to any such asserted claim without the prior written consent of the Indemnified Party (a) if such judgment or settlement does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect to such claim

or (b) if, as a result of such consent or settlement, injunctive or other equitable relief would be imposed against the Indemnified Party or such judgment or settlement could materially and adversely affect the business, operations, assets or reputation of the Indemnified Party. No Indemnified Party will consent to the entry of any judgment or enter into any settlement with respect to any such asserted claim without the prior written consent of the Indemnifying Party. If an Indemnifying Party makes a payment with respect to any Losses and the Indemnified Party subsequently receives from a third party or under the terms of any third party insurance policy (excluding fronting policies) a sum in respect of the same claim, the receiving party will repay to the other party such amount that is equal to the sum subsequently received.

8.4 If the indemnification provided for in Sections 8.1 through 8.3 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any Loss referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such Loss as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

SECTION 9

Miscellaneous

9.1 **Governing Law; Consent to Jurisdiction.** This Agreement shall be governed in all respects by the laws of the State of Delaware (without reference to the conflicts of law provisions thereof). Each of the Company and the Investor agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement exclusively in the United States District Court for the District of Delaware or any Delaware State court sitting in New Castle County (the "**Chosen Courts**"), and solely in connection with claims arising under this Agreement (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto and (iv) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 9.4 of this Agreement. Each party agrees that a final judgment in any lawsuit, action or other proceeding arising out of or relating to this Agreement brought in the courts referred to in the first sentence of this Section 9.1 shall be conclusive and binding upon each of the parties hereto and may be enforced in any other courts the jurisdiction of which each of the parties is or may be subject, by suit upon such judgment.

Each party hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement. Each party (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications set forth in this Section 9.1.

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

9.3 **Successors, Assigns.** Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, permitted 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 (a) either party may assign this Agreement to any third party that acquires all or substantially all of such party's business, whether by merger, sale of assets or otherwise and (b) the Investor may assign this Agreement to any direct or indirect wholly owned subsidiary or subsidiaries of the Investor in conjunction with the assignment of the Shares to such subsidiary.

9.4 **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be sent by facsimile (receipt confirmed) or mailed by registered or certified mail, postage prepaid, return receipt requested, or otherwise delivered by hand or by messenger, addressed

if to the Investor, at the following address:

Bristol-Myers Squibb Company
345 Park Avenue
New York, New York 10154-0037
Attention: General Counsel
Facsimile: (212) 546-9562

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

Bristol-Myers Squibb Pharmaceuticals Group
Route 206 & Province Line Road
Princeton, New Jersey 08543
Attention: Vice President and Associate General Counsel
Transactional Practice Group
Email: joseph.campisi@bms.com
Facsimile: (609) 252-7680

if to the Company, at the following address:

Eiger Biopharmaceuticals, Inc.
350 Cambridge Avenue, Suite 350
Palo Alto, CA 94306
Attention: Chief Executive Officer
Email: dcory@eigerbio.com
Facsimile: (650) 618-1621

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

Cooley LLP
3175 Hanover Street
Palo Alto, California 94304
Attention: Glen Sato
Email: gsato@cooley.com
Facsimile: (650) 849-7400

or at such other address as one party shall have furnished to the other party in writing. If notice is provided by facsimile, it shall be deemed to be given one (1) business day after transmission (with receipt of appropriate confirmation). If notice is provided by U.S. mail, notice shall be deemed to be given four (4) days after proper deposit in a U.S. mailbox, postage prepaid, and properly addressed. If notice is provided by a messenger service that guarantees "next business day" delivery, it shall be deemed effective one (1) business day after deposit with such messenger service.

9.5 **Expenses.** Except as otherwise contemplated by this Agreement, each of the Company and the Investor shall bear its own expenses and legal fees incurred on its behalf with respect to this Agreement and the transactions contemplated hereby.

9.6 **Confidentiality.** The Schedule of Exceptions hereto is Confidential Information of the Company pursuant to that certain Confidential Disclosure Agreement between the Parties, dated May 13, 2015.

9.7 **Finder's Fees.** Each of the Company and the Investor shall indemnify and hold the other harmless 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 the Investor, or any of its respective partners, employees, or representatives, as the case may be, is responsible.

9.8 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be enforceable against the party actually executing the counterpart, and all of which together shall constitute one instrument.

9.9 **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. The parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the parties when entering into this Agreement may be realized.

9.10 **Entire Agreement; Amendments.** This Agreement (including all schedules and exhibits hereto) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes and cancels all previous express or implied agreements and understandings, negotiations, writings and commitments, either oral or written, in respect of the subject matter hereof. This Agreement may be amended, or any terms hereof modified or waived, only by a written

instrument duly executed by authorized representatives of both parties hereto. Any amendment or waiver by a party effected in accordance with this Section 9.10 shall be binding upon such party, including with respect to any Shares purchased under this Agreement at the time outstanding and held by such party and each future holder of all such Shares. 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.

9.11 **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. Waiver of any provision hereunder or of any breach of any provision hereof shall not be deemed to be a continuing waiver or a waiver of any other breach of such provision (or any other provision) on such occasion or any succeeding occasion. None of the terms, covenants and conditions of this Agreement can be waived except by the written consent of the party waiving compliance.

9.12 **Headings.** The captions to the several Sections and subsections hereof are not a part of this Agreement, but are merely for convenience to assist in locating and reading the several Sections and subsections hereof.

9.13 **Certain Conventions.** Any reference in this Agreement to a Section, subsection, paragraph or clause shall be deemed to be a reference to a Section, subsection, paragraph or clause, of or to, as the case may be, this Agreement, unless otherwise indicated. Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender, (b) words such as “herein”, “hereof”, and “hereunder” refer to this Agreement as a whole and not merely to the particular provision in which such words appear, (c) words using the singular shall include the plural, and vice versa, (d) references to “day” mean calendar days, (e) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “but not limited to,” “without limitation,” “inter alia” or words of similar import, and (f) the word “or” shall not be deemed to be used in the exclusive sense and shall instead be used in the inclusive sense to mean “or”, unless the context is clear that only one of the options described may apply.

9.14 **Termination.** This Agreement shall terminate automatically if the License Agreement is terminated pursuant to its terms prior to the consummation of the Closing.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Common Stock Purchase Agreement as of the date first set forth above.

COMPANY:

EIGER BIOPHARMACEUTICALS, INC.

/s/ David Cory

David Cory

President and Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Common Stock Purchase Agreement as of the date first set forth above.

INVESTOR:

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Graham Brazier

Name: Graham Brazier

Title: Vice President, Business Development

EIGER BIOPHARMACEUTICALS, INC.

SCHEDULE OF EXCEPTIONS

In connection with the Common Stock Purchase Agreement, dated as of April 20, 2016 (the “**Agreement**”), by and between Eiger BioPharmaceuticals, Inc., a Delaware corporation (the “**Company**”) and Bristol-Myers Squibb Company, a Delaware corporation, the Company hereby delivers this Schedule of Exceptions (the “**Schedule**”) to the Company’s representations and warranties given in Section 2 of the Agreement as of the Closing Date, which disclosure shall be deemed to be representations and warranties by the Company as if made in Section 2 of the Agreement. The section numbers in this Schedule correspond to the numbered and lettered sections and subsections contained in the Agreement, and the disclosures in any section or subsection of this Schedule shall qualify other sections and subsections of the Agreement and this Schedule only to the extent that it is readily apparent from a reading of the disclosure that such disclosures is applicable to such other sections and subsections. Descriptions of and references to any document do not purport to be complete and are qualified in their entirety by reference to the applicable document itself.

Nothing in this Schedule is intended to broaden the scope of any representation or warranty contained in the Agreement or to create any covenant. Inclusion of any item in this Schedule (1) does not represent a determination that such item is material or establish a standard of materiality, (2) does not represent a determination that such item did not arise in the ordinary course of business, and (3) shall not constitute, or be deemed to be, an admission to any third party concerning such item or an admission of default or breach under any agreement or document. Matters reflected in this Schedule are not necessarily limited to matters required by the Agreement to be reflected herein; such additional matters are included for informational purposes. Capitalized terms used herein, unless specifically defined herein, shall have the meanings assigned them in the Agreement.

Section 2.2 – Subsidiaries

EBPI Merger, Inc.
EB Pharma LLC
Eiger BioPharmaceuticals Europe Limited

Section 2.5 – Capitalization

(c)(i)

As of March 22, 2016 there are options for 287,988 shares of Common Stock issued and outstanding and warrants outstanding for the purchase of 10,180 shares of Common Stock.

(c)(ii)

On March 22 and 28, 2016, the board of directors granted options for a total of 759,028 shares of Common Stock to employees and directors of the Company, subject to stockholder approval of an amendment and restatement to the Celladon Corporation 2013 Equity Incentive Plan (the “**Celladon EIP**”) to, among other things, increase the number of shares available for issuance under the Celladon EIP.

Section 2.6 – SEC Reports; Financial Statements

(b)

The Company has furnished the Financial Statements for fiscal year ended December 31, 2015 for Celladon Corporation (“**Celladon**”).

(c)

Material Agreements under which notice or threats of termination have occurred:

Non-Exclusive License Agreement by and between Celladon Corporation and AskBio, LLC (“**AskBio**”), dated January 15, 2008. A payment of a \$100,000 licensing fee is currently due and payable by the Company to AskBio under this agreement and the Company expects the agreement will be terminated by the Company by the third quarter of 2016 (the “**AskBio Agreement**”).

Amended and Restated License Agreement by and between Celladon Corporation and AmpliPhi Biosciences Corporation (“**AmpliPhi**”), dated June 27, 2012. A notice of termination, effective April 12, 2016, was mailed by the Company to AmpliPhi (the “**AmpliPhi License**”).

Sublicense Agreement by and between Celladon Corporation and AmpliPhi Biosciences Corporation, dated June 27, 2012. A notice of termination, effective April 12, 2016, was mailed by the Company to AmpliPhi (the “**AmpliPhi Sublicense**”).

Section 2.7 – Material Adverse Change

(a)

On March 22, 2016, the Company completed a business combination with Celladon in accordance with the terms of the Agreement and Plan of Merger and Reorganization, dated as of November 18, 2015, by and among the Company, Celladon Merger Sub, Inc. (“**Merger Sub**”) and Celladon, pursuant to which Merger Sub merged with and into the Company, with the Company surviving as a wholly owned subsidiary of Celladon, and Celladon changing its name to Eiger Biopharmaceuticals, Inc. (the “**Merger**”).

In conjunction with the Merger, on March 22, 2016, the Company completed a sale of 26,329,817 shares of Common Stock of the Company at a price of \$1.5002 per share pursuant a Subscription Agreement by and among the Company and each purchaser listed on Annex A thereto.

(f)

Each of the directors and executive officers of the Company entered into an Indemnity Agreement dated March 22, 2016.

(g)

In connection with the Merger, all the directors and officers of Celladon prior to the Merger resigned effective as of the closing of the Merger.

Section 2.8 – No Undisclosed Liabilities

A licensing fee in the amount of \$100,000 current due and payable under the AskBio Agreement.

Section 2.10 – Actions Pending

In July 2015, following Celladon’s announcements of the negative CUPID 2 data and the suspension of further research and development activities and the subsequent declines of the price of Celladon’s common stock, three putative securities class action complaints (captioned Fialkov v. Celladon Corporation, Case No. 15-cv-1458-AJB-DHB, Lorusso v. Celladon Corporation, Case No. 15-cv-1501-L-JLB and Jacobs v. Celladon Corporation, Case No. 15-cv-1529-AJB-MDD) were filed in the U.S. District Court for the Southern District of California against Celladon and certain of Celladon’s then current and former officers. The complaints generally allege that the defendants violated Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934, as amended, by making materially false and misleading statements regarding the clinical trial program for MYDICAR, thereby artificially inflating the price of Celladon’s common stock. The complaints seek unspecified monetary damages and other relief, including attorneys’ fees. On September 1, 2015, six stockholders (or groups of stockholders) filed motions to consolidate the three putative securities class actions and to appoint lead plaintiffs (the “**Motions to Consolidate**”). A hearing on the Motions to Consolidate was held on December 3, 2015. On December 9, 2015, the court issued

an order consolidating the three putative securities class actions, appointing Wahid Tadros to serve as lead plaintiff ("**Lead Plaintiff**"), and appointing Robbins Geller Rudman & Dowd LLP and Labaton Sucharow LLP to serve as co-lead counsel. On February 29, 2016, Lead Plaintiff filed a consolidated amended complaint. It is possible that additional suits will be filed, or allegations made by stockholders, with respect to these same or other matters and also naming Celladon and or Celladon's officers and directors as defendants. The Company believes that it has meritorious defenses and intends to defend these lawsuits vigorously. Due to the early stage of these proceedings, the Company is not able to predict or reasonably estimate the ultimate outcome or possible losses relating to these claims.

Section 2.18 – Intellectual Property

(a)

Other Persons with rights to Company Intellectual Property:

Asset Purchase Agreement, effective as of December 8, 2010, by and between Eiger BioPharmaceuticals, Inc. and Eiger Group International, Inc.

License Agreement, dated September 3, 2010, by and between Eiger BioPharmaceuticals, Inc. and Merck Corporation.

License Agreement, effective as of December 19, 2014, by and between EB Pharma, LLC and Janssen Pharmaceutica NV.

Asset Purchase Agreement, by and among Eiger BioPharmaceuticals, Inc., Tracey McLaughlin and Colleen Craig, dated as of September 25, 2015.

License Agreement, dated as of May 1, 2015, by and between Eiccose, LLC and Nippon Kayaku Co., Ltd.

Exclusive Agreement, dated May 1, 2015, by and between Eiccose, LLC and the Board of Trustees of the Leland Stanford Junior University (rights in-licensed from Stanford contain an express reservation of customary rights for the US Government with respect to the Company's IP rights).

Exclusive Agreement, dated October 27, 2015, by and between Eiccose, LLC and the Board of Trustees of the Leland Stanford Junior University (rights in-licensed from Stanford contain an express reservation of customary rights for the US Government with respect to the Company's IP rights).

Asset Purchase Agreement, by and among Eiger BioPharmaceuticals, Inc. and Eiccose, LLC, dated as of October 29, 2015.

AskBio Agreement.

License Agreement by and between Celladon Corporation and AdVec Inc., dated February 24, 2009.

AmpliPhi License.

AmpliPhi Sublicense.

Assignment and License Agreement by and between Celladon Corporation and Enterprise Management Partners, LLC dated July 18, 2014.

STATEMENT OF COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

	Year Ended December 31,			Three Months
	2015	2014	2013	Ended March 31, 2016
	(in thousands)			
Net loss before income tax benefit (provision)	\$ (13,322)	\$ (1,516)	\$ (953)	\$ (9,748)
Ratio of earnings to fixed charges(1)	N/A	N/A	N/A	N/A
Deficiency of earnings available to cover fixed charges(2)	\$ (12,973)	\$ (1,516)	\$ (953)	\$ (9,063)

(1) In each of the periods presented, earnings were not sufficient to cover fixed charges.

(2) For purposes of this calculation, earnings consist of loss before income taxes and fixed charges. Fixed charges consist of interest expense.

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Eiger BioPharmaceuticals, Inc.

We consent to the use of our report dated May 13, 2016, with respect to the consolidated balance sheets of Eiger BioPharmaceuticals, Inc. (“Private Eiger”) as of December 31, 2015 and 2014, and the related consolidated statements of operations and comprehensive loss, stockholders’ (deficit) equity, and cash flows, for each of the years in the three-year period ended December 31, 2015, included in the Form 8-K/A, filed on May 13, 2016 and June 17, 2016, incorporated herein by reference and to the reference to our firm under the heading “Experts” in the Registration Statement and Prospectus.

/s/ KPMG LLP

San Francisco, California
June 17, 2016

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the reference to our firm under the caption “Experts” in the Registration Statement (Form S-3 No.) and related Prospectus of Eiger BioPharmaceuticals (Formerly Celladon Corporation) for the registration of up to \$125,000,000 in aggregate principal amount of its common stock, preferred stock, debt securities, or warrants and to the incorporation by reference therein of our report dated March 30, 2016, with respect to the consolidated financial statements of Celladon Corporation included in Eiger BioPharmaceuticals, Inc.’s Annual Report (Form 10-K) for the year ended December 31, 2015, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Diego, California
June 17, 2016