

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-Q**

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended March 31, 2024  
or  
 **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number: 001-40880

**XERIS BIOPHARMA HOLDINGS, INC.**

(Exact name of the registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)  
**1375 West Fulton Street, Suite 1300**  
**Chicago, Illinois**  
(Address of principal executive offices)

**87-1082097**  
(I.R.S. Employer Identification No.)

**60607**  
(Zip Code)

**(844) 445-5704**

(Registrant's telephone number, including area code)

**Not applicable**

(Former name, former address and former fiscal year, if changed since last report)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
<b>Common Stock, \$0.0001 par value per share</b>	<b>XERS</b>	<b>The Nasdaq Global Select Market</b>

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (\$232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

As of April 30, 2024, 148,255,663 shares, par value \$0.0001 per share, of common stock were outstanding.

## XERIS BIOPHARMA HOLDINGS, INC.

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Solely for convenience, the trademarks and trade names in this Quarterly Report on Form 10-Q (this "Quarterly Report") are referred to without the ® and ™ symbols, but absence of such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto. The trademarks, trade names and service marks appearing in this Quarterly Report are the property of their respective owners.

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**PART I. FINANCIAL INFORMATION**  
**ITEM 1. FINANCIAL STATEMENTS**

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Condensed Consolidated Balance Sheets**  
(in thousands, except share and par value)

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
	(unaudited)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 62,690	\$ 67,449
Short-term investments	24,662	5,002
Trade accounts receivable, net	37,414	39,197
Inventory	40,878	38,838
Prepaid expenses and other current assets	7,636	5,778
Total current assets	173,280	156,264
Property and equipment, net	5,783	5,971
Operating lease right-of-use assets	23,027	23,204
Goodwill	22,859	22,859
Intangible assets, net	107,053	109,764
Other assets	4,614	4,540
Total assets	\$ 336,616	\$ 322,602
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 7,094	\$ 11,565
Current operating lease liabilities	4,624	3,495
Other accrued liabilities	22,391	23,510
Accrued trade discounts and rebates	22,560	22,149
Accrued returns reserve	14,593	14,198
Current portion of contingent value rights	1,021	19,109
Other current liabilities	801	1,167
Total current liabilities	73,084	95,193
Long-term debt, net of unamortized debt issuance costs	229,674	190,932
Non-current operating lease liabilities	34,397	34,764
Non-current contingent value rights	—	1,379
Deferred tax liabilities	2,575	2,268
Other liabilities	6,064	4,848
Total liabilities	345,794	329,384
Commitments and contingencies (Note 14)		
Stockholders' equity (deficit):		
Preferred stock—par value \$0.0001, 25,000,000 shares and 25,000,000 shares authorized and no shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively	—	—
Common stock—par value \$0.0001, 350,000,000 shares and 350,000,000 shares authorized as of March 31, 2024 and December 31, 2023, respectively; 148,224,403 and 138,130,715 shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively	15	14
Additional paid in capital	626,848	610,254
Accumulated deficit	(636,005)	(617,025)
Accumulated other comprehensive loss	(36)	(25)
Total stockholders' equity (deficit)	(9,178)	(6,782)
Total liabilities and stockholders' equity (deficit)	\$ 336,616	\$ 322,602

See accompanying notes to condensed consolidated financial statements.

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Condensed Consolidated Statements of Operations and Comprehensive Loss**  
(in thousands, except share and per share data, unaudited)

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Product revenue, net	\$ 40,263	\$ 32,265
Royalty, contract and other revenue	375	931
Total revenue	40,638	33,196
Costs and expenses:		
Cost of goods sold	5,971	5,319
Research and development	7,821	4,838
Selling, general and administrative	38,380	33,605
Amortization of intangible assets	2,711	2,711
Total costs and expenses	54,883	46,473
Loss from operations	(14,245)	(13,277)
Other income (expense):		
Interest and other income	1,923	1,300
Debt refinancing costs	(2,690)	—
Interest expense	(7,032)	(6,216)
Change in fair value of warrants	4	—
Change in fair value of contingent value rights	3,367	1,359
Total other expense	(4,428)	(3,557)
Net loss before benefit from income taxes	(18,673)	(16,834)
Income tax (expense) benefit	(307)	—
Net loss	\$ (18,980)	\$ (16,834)
Other comprehensive loss, net of tax:		
Unrealized losses on investments	(10)	(6)
Foreign currency translation adjustments	(1)	—
Comprehensive loss	\$ (18,991)	\$ (16,840)
Net loss per common share - basic and diluted	\$ (0.14)	\$ (0.12)
Weighted average common shares outstanding - basic and diluted	140,513,907	137,142,565

See accompanying notes to condensed consolidated financial statements.

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Condensed Consolidated Statements of Stockholders' Equity (Deficit)**  
(in thousands, except share data, unaudited)

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance, December 31, 2022	136,273,090	\$ 14	\$ 599,966	\$ (23)	\$ (554,770)	\$ 45,187
Net loss	—	—	—	—	(16,834)	(16,834)
Vesting of restricted stock units (net of 743,677 shares withheld for tax)	1,018,187	—	(863)	—	—	(863)
Stock-based compensation	—	—	2,564	—	—	2,564
Other comprehensive loss	—	—	—	(6)	—	(6)
Balance, March 31, 2023	137,291,277	\$ 14	\$ 601,667	\$ (29)	\$ (571,604)	\$ 30,048

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance, December 31, 2023	138,130,715	\$ 14	\$ 610,254	\$ (25)	\$ (617,025)	\$ (6,782)
Net loss	—	—	—	—	(18,980)	(18,980)
Issuance of common stock to settle contingent value rights	7,525,048	1	15,802	—	—	15,803
Exercise of stock options	229,417	—	459	—	—	459
Vesting of restricted stock units (net of 1,437,592 shares withheld for tax)	2,339,223	—	(3,434)	—	—	(3,434)
Stock-based compensation	—	—	3,767	—	—	3,767
Other comprehensive loss	—	—	—	(11)	—	(11)
Balance, March 31, 2024	148,224,403	\$ 15	\$ 626,848	\$ (36)	\$ (636,005)	\$ (9,178)

See accompanying notes to condensed consolidated financial statements.

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Condensed Consolidated Statements of Cash Flows**  
(in thousands, unaudited)

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Cash flows from operating activities:		
Net loss	\$ (18,980)	\$ (16,834)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	326	364
Amortization of intangible assets	2,711	2,711
Amortization of premium/discount on investments	(184)	(382)
Amortization of debt discount and debt issuance costs	573	548
Amortization of operating right-of-use assets	177	106
Deferred income tax expense (benefit)	307	—
Stock-based compensation	3,767	2,564
Change in fair value of contingent value rights	(3,367)	(1,359)
Changes in operating assets and liabilities:		
Trade accounts receivable	1,783	(30)
Prepaid expenses and other current assets	(1,858)	(1,225)
Inventory	(2,332)	(3,817)
Accounts payable	(4,471)	6,935
Other accrued liabilities	(1,123)	(13,931)
Accrued trade discounts and rebates	411	56
Accrued returns reserve	395	2,081
Supply agreement liabilities	—	(3,838)
Operating lease liabilities	762	(188)
Other	800	99
Net cash used in operating activities	<u>(20,303)</u>	<u>(26,140)</u>
Cash flows from investing activities:		
Capital expenditures	(164)	(238)
Purchases of investments	(24,486)	(43,741)
Sales and maturities of investments	5,000	—
Net cash used in investing activities	<u>(19,650)</u>	<u>(43,979)</u>
Cash flows from financing activities:		
Proceeds from debt refinancing	50,000	—
Payment of debt discount	(11,831)	—
Proceeds from exercise of stock awards	459	—
Repurchase of common stock withheld for taxes	(3,434)	(863)
Net cash provided by (used in) financing activities	<u>35,194</u>	<u>(863)</u>
Decrease in cash, cash equivalents and restricted cash	(4,759)	(70,982)
Cash, cash equivalents and restricted cash, beginning of year	71,674	126,314
Cash, cash equivalents and restricted cash, end of year	<u>\$ 66,915</u>	<u>\$ 55,332</u>

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Condensed Consolidated Statements of Cash Flows**  
(in thousands, unaudited)

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Supplemental schedule of cash flow information:		
Cash paid for interest	\$ 1,501	\$ 9,826
Supplemental schedule of non-cash activities:		
Issuance of common shares in settlement of CVR liability	\$ 15,803	\$ —

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the condensed consolidated balance sheets that agrees to the same amounts shown in the condensed consolidated statements of cash flows (in thousands):

	<b>As of March 31,</b>	
	<b>2024</b>	<b>2023</b>
Cash flows from operating activities:		
Cash and cash equivalents	\$ 62,690	\$ 50,984
Restricted cash included in Other assets <sup>(1)</sup>	4,225	4,348
<b>Total cash, cash equivalents and restricted cash shown in the condensed consolidated statements of cash flows</b>	<b>\$ 66,915</b>	<b>\$ 55,332</b>

<sup>(1)</sup> These restricted cash items are primarily security deposit in the form of letters of credit for the Company to secure certain leases.

See accompanying notes to condensed consolidated financial statements.

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

**Note 1. Organization and nature of the business*****Nature of business***

Xeris Biopharma Holdings, Inc. ("Xeris Biopharma" or the "Company") is a growth-oriented biopharmaceutical company committed to improving patients' lives by developing and commercializing clinically meaningful products across a range of therapies. The Company currently has three commercially available products: Gvoke, a ready-to-use, liquid-stable glucagon for the treatment of severe hypoglycemia; Recorlev, a cortisol synthesis inhibitor for the treatment of endogenous hypercortisolemia in adult patients with Cushing's syndrome approved by the Food and Drug Administration ("FDA") in December 2021; and Keveyis, the first therapy approved in the United States to treat hyperkalemic, hypokalemic, and related variants of Primary Periodic Paralysis ("PPP"). The Company also has a pipeline of development programs to bring new products forward using its proprietary formulation science, XeriSol and XeriJect.

As used herein, the "Company" or "Xeris" refers to Xeris Pharmaceuticals, Inc. ("Xeris Pharma") when referring to periods prior to the acquisition of Strongbridge Biopharma plc ("Strongbridge") on October 5, 2021 and to Xeris Biopharma when referring to periods on or subsequent to October 5, 2021.

Throughout this document, unless otherwise noted, references to Gvoke include Gvoke PFS, Gvoke HypoPen, Gvoke Kit and Ogluo (glucagon).

The Company is subject to a number of risks similar to other specialty pharmaceutical companies, including, but not limited to, successful commercialization and market acceptance of available products and any future products, if and when approved, successful development of product candidates, the development of new technological innovations by competitors, and protection of intellectual property.

***Liquidity and capital resources***

The Company has incurred operating losses since inception and has an accumulated deficit of \$636.0 million as of March 31, 2024. The Company expects to continue to incur net losses for at least the next 12 months beyond the issuance date of these condensed consolidated financial statements. Based on the Company's current operating plans and existing working capital at March 31, 2024, the Company believes that its cash resources are sufficient to sustain operations and capital expenditure requirements for at least the next 12 months from the issuance date of these condensed consolidated financial statements.

If needed, the Company may elect to finance its operations through equity or debt financing along with revenues. There can be no assurance that such funding may be available to the Company on acceptable terms, or at all, or that the Company will be able to successfully market and sell Gvoke, Recorlev and Keveyis. Market volatility resulting from geopolitical instability resulting from the ongoing military conflicts between Russia and Ukraine and Israel and Hamas, rising interest rates, inflationary pressures, the tightening of lending standards, a potential shutdown of the U.S. government, any further deterioration in the macroeconomic economy or financial services industry resulting from actual or potential bank failures, or other factors could also adversely impact the Company's ability to access capital as and when needed. The issuance of equity securities may result in dilution to stockholders. If the Company raises additional funds through the issuance of additional debt, which may have rights, preferences and privileges senior to those of the Company's common stockholders, the terms of the debt could impose significant restrictions on the Company's operations. The failure to raise funds as and when needed could have a negative impact on the Company's financial condition and ability to pursue its business strategies. If additional funding is not secured when required, the Company may need to delay or curtail its operations until such funding is received, which would have a material adverse impact on the business prospects and results of operations.

**Note 2. Basis of presentation and summary of significant accounting policies and estimates*****Basis of presentation***

The condensed consolidated financial statements are unaudited and have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"), including those for interim financial information, and with the instructions for Quarterly Reports on Form 10-Q and Article 10 of Regulation S-X issued by the U.S. Securities and Exchange Commission (the "SEC").

In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments, considered necessary for a fair presentation of the Company's financial position, results of operations and cash flows for the periods presented. The results of operations for such periods are not necessarily indicative of the results that may be expected for any future period. The accompanying financial statements should be read in conjunction with the audited financial statements and the related notes thereto for the year ended December 31, 2023 included in the Company's Annual Report on Form 10-K filed with the SEC on March 6, 2024.

Certain information and disclosures normally included in the annual financial statements prepared in accordance with GAAP, but that is not required for interim reporting purposes, have been condensed or omitted.



**XERIS BIOPHARMA HOLDINGS, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

Any reference in these notes to applicable guidance is meant to refer to GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Update ("ASU") issued by the Financial Accounting Standards Board ("FASB").

***Basis of consolidation***

These condensed consolidated financial statements include the financial statements of Xeris Biopharma Holdings, Inc. and subsidiaries. All intercompany transactions have been eliminated.

***Use of estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses included in the financial statements and accompanying notes. Actual results could differ from those estimates.

***Revenue recognition***

The Company applies the guidance in ASC 606, *Revenue Recognition*, to all contracts with customers within the scope of the standard.

The Company sells product primarily to wholesalers or a specialty pharmacy that subsequently resell to retail pharmacies or patients. The Company enters into arrangements with payors, group purchasing organizations, and healthcare providers that provide for government-mandated or privately-negotiated rebates, chargebacks and discounts related to the Company's products. The Company currently sells Gvoke, Recorlev and Keveyis in the United States only.

Revenue is recognized when the Company's customer (e.g., a wholesaler or specialty pharmacy) obtains control of promised goods or services, which is when the Company's obligations under the terms of the contract with the customer are satisfied, based on the consideration the Company expects to receive in exchange for those goods or services.

Revenues are recorded at the net product sales price, which includes estimated allowances for patient copay assistance programs, prompt payment discounts, payor rebates, chargebacks, service fees, and product returns, all of which are recorded at the time of sale to the pharmaceutical wholesaler or other customer. The Company applies significant judgments and estimates in determining some of these allowances. If actual results differ from its estimates, adjustments are made to these allowances in the period in which the actual results or updates to estimates become known.

Such revenue is reported as product revenue, net in the condensed consolidated statements of operations and comprehensive loss.

Additionally, the Company earns revenue from research collaborations for the use of Xeris' proprietary formulation technology platforms and royalties from branded products. Such revenue is recognized as earned in accordance with contract terms when it can be reasonably estimated and collectability is reasonably assured. This revenue is reported as royalty, contract and other revenue in the condensed consolidated statements of operations and comprehensive loss.

***Concentration of credit risk***

For the three months ended March 31, 2024 and March 31, 2023, four customers accounted for 96% and 96% of the Company's gross product revenue, respectively. At March 31, 2024 and December 31, 2023, the same four customers accounted for 98% and 99% of the trade accounts receivable, net, respectively.

***New accounting pronouncements***

***Adopted accounting standard***

In July 2023, the FASB issued ASU 2023-03, *Presentation of Financial Statements (Topic 205), Income Statement - Reporting Comprehensive Income (Topic 220), Distinguishing Liabilities from Equity (Topic 480), Equity (Topic 505), and Compensation - Stock Compensation (Topic 718)*. This standard amends various SEC paragraphs in the Accounting Standards Codification to primarily reflect the issuance of SEC Staff Accounting Bulletin No. 120. Staff Accounting Bulletin No. 120 provides guidance to companies issuing share-based awards shortly before announcing material, nonpublic information to consider such material nonpublic information to adjust observable market prices if the release of material nonpublic information is expected to affect the share price. The standard does not provide any new guidance so there is no transition or effective date associated with it and therefore, the Company adopted this standard with no impact on the Company's financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. This standard eliminates certain accounting models to simplify the accounting for convertible instruments, expands the disclosure requirements related to the terms and features of convertible instruments, and amends the guidance for the derivatives scope exception for contracts settled in an entity's own equity. Consequently, more convertible debt instruments will be reported as a single liability instrument and more convertible preferred stock as a single equity instrument with no separate accounting for embedded conversion features. This standard enhances the consistency of earnings-per-share ("EPS") calculations by requiring that

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

an entity use the if-converted method and that the effect of potential share settlement be included in diluted EPS calculations and disclosures. The Company adopted ASU 2020-06 on January 1, 2024. Adoption of ASU 2020-06 did not impact the Company's financial position, results of operations or cash flows since the Company did not separately present in equity an embedded conversion feature in such debt but accounted for the convertible debt instrument wholly as debt.

*Pending accounting standards*

In March 2024, the FASB issued ASU 2024-02, *Codification Improvements - Amendments to Remove References to the Concept Statements*. This standard amends the Codification to remove references to various concepts statements and impacts a variety of topics in the Codification. The amendments apply to all reporting entities within the scope of the affected accounting guidance, but in most instances the references removed are extraneous and not required to understand or apply the guidance. Generally, the amendments in this standard are not intended to result in significant accounting changes for most entities. The standard is effective January 1, 2025 and is not expected to have a material impact on the Company's financial statements.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*. This standard expands the requirements for income tax disclosures in order to provide greater transparency. The amendments are effective for fiscal years beginning after December 15, 2024. Early adoption is permitted. The amendments should be applied prospectively. The Company is evaluating the timing and effects of the adoption of this standard on the Company's disclosures.

In December 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Segment Reporting Disclosures*. This standard requires an entity to provide more detailed information about its reportable segment expenses that are included within management's measurement of profit and loss and will require certain annual disclosures to be provided on an interim basis. The amendments in this ASU are effective for the Company in 2025 for annual reporting and in 2026 for interim reporting, with early adoption permitted beginning in 2024, and is required to be applied using the full retrospective method of transition. The Company is evaluating the timing and effects of the adoption of this standard on the Company's segment disclosures.

In October 2023, the FASB issued ASU 2023-06, *Disclosure Improvements - Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative*. This Standard modifies the disclosure or presentation requirements of a variety of Topics in the Codification to align with the SEC's regulations. The ASU also makes those requirements applicable to entities that were not previously subject to the SEC's requirements. The ASU is effective for the Company two years after the effective date to remove the related disclosure from Regulation S-X or S-K. As of the date these financial statements have been made available for issuance, the SEC has not yet removed any related disclosure. The Company does not expect the adoption of this standard to have a material impact on the Company's financial statements.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This standard provides optional expedients for the application of GAAP, if certain criteria are met, to contracts and other transactions that reference London Inter-bank Offered Rate ("LIBOR") or other reference rates that are expected to be discontinued because of reference rate reform. This standard is effective for all entities as of March 12, 2020 through December 31, 2022. On December 21, 2022, the FASB issued ASU 2022-06, *Reference Rate Reform (Topic 848): Deferral of the Sunset Date of Topic 848*, which extends the period of time entities can utilize the reference rate reform relief guidance under ASU 2020-04 from December 31, 2022 to December 31, 2024. The Company does not expect the adoption of this standard to have a material impact on the Company's financial statements.

**Note 3. Disaggregated revenue**

Disaggregated revenue by product (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Product revenue:		
Gvoke	\$ 16,579	\$ 15,033
Keveyis	13,085	12,755
Recorlev	10,599	4,477
Product revenue, net	40,263	32,265
Royalty, contract and other revenue	375	931
Total revenue	\$ 40,638	\$ 33,196

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

**Note 4. Short-term investments**

The Company classifies investments in debt securities as available-for-sale. Debt securities are comprised of liquid investments that are highly rated securities and, as of March 31, 2024, consist of U.S. government securities, all with remaining maturities of less than one year. Debt securities as of March 31, 2024 had an average remaining maturity of 0.3 years. The debt securities are reported at fair value with unrealized gains or losses recorded in accumulated other comprehensive income (loss) in the condensed consolidated balance sheets. The cost of short-term investments is adjusted for amortization of premiums or accretion of discounts to maturity, and such amortization or accretion, as well as interest income, are included in interest and other income in the condensed consolidated statements of operations and comprehensive loss. Refer to "Note 11 - Fair value measurements," for information related to the fair value measurements and valuation methods utilized.

The following table represents the Company's short-term investments by major security type (in thousands):

	<b>March 31, 2024</b>			
	<b>Amortized Cost</b>	<b>Gross Unrealized Gains</b>	<b>Gross Unrealized Losses</b>	<b>Total Fair Value</b>
<b>Investments:</b>				
U.S. government securities	\$ 24,674	\$ —	\$ (12)	\$ 24,662
<b>Total available-for-sale investments</b>	<b>\$ 24,674</b>	<b>\$ —</b>	<b>\$ (12)</b>	<b>\$ 24,662</b>

  

	<b>December 31, 2023</b>			
	<b>Amortized Cost</b>	<b>Gross Unrealized Gains</b>	<b>Gross Unrealized Losses</b>	<b>Total Fair Value</b>
<b>Investments:</b>				
U.S. government securities	\$ 5,004	\$ —	\$ (2)	\$ 5,002
<b>Total available-for-sale investments</b>	<b>\$ 5,004</b>	<b>\$ —</b>	<b>\$ (2)</b>	<b>\$ 5,002</b>

**Allowance for Credit Losses**

For available-for-sale securities in an unrealized loss position, the Company first assesses whether they are intended to be sold, or if it is more likely than not that the Company will be required to sell, the security before recovery of its amortized cost basis. If either of the criteria regarding intent or requirement to sell is met, the security's amortized cost basis is written down to fair value through earnings. For available-for-sale securities that do not meet the above criteria, the Company evaluates whether the decline in fair value has resulted from credit losses or other factors. In making this assessment, the Company considers the severity of the impairment, any changes in interest rates, market conditions, changes to the underlying credit ratings and forecasted recovery, among other factors. The credit-related portion of unrealized losses, and any subsequent improvements, are recorded in interest income through an allowance account. Any impairment that has not been recorded through an allowance for credit losses is included in other comprehensive loss on the statements of operations and comprehensive loss. No credit loss allowance was recorded in the three months ended March 31, 2024 and 2023.

**Note 5. Inventory**

The components of inventory consist of the following (in thousands):

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Raw materials	\$ 20,603	\$ 17,404
Work in process	7,809	10,959
Finished goods	12,466	10,475
<b>Inventory</b>	<b>\$ 40,878</b>	<b>\$ 38,838</b>

Inventory reserves were \$2.4 million and \$2.4 million at March 31, 2024 and December 31, 2023, respectively.

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**Note 6. Property and equipment**

Property and equipment consist of the following (in thousands):

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Lab equipment	\$ 4,275	\$ 4,153
Furniture and fixtures	539	539
Computer equipment	876	860
Office equipment	97	97
Software	374	374
Leasehold improvements	5,984	5,984
Total property and equipment	<u>12,145</u>	<u>12,007</u>
Less: accumulated depreciation and amortization	<u>(6,362)</u>	<u>(6,036)</u>
Property and equipment, net	<u>\$ 5,783</u>	<u>\$ 5,971</u>

Depreciation and amortization expense relating to property and equipment was \$0.3 million and \$0.4 million for the three months ended March 31, 2024 and 2023, respectively.

**Note 7. Intangible assets**

Identified intangible assets consist of the following (in thousands):

	Life (Years)	<b>March 31, 2024</b>			<b>December 31, 2023</b>		
		<b>Gross assets</b>	<b>Accumulated amortization</b>	<b>Net</b>	<b>Gross assets</b>	<b>Accumulated amortization</b>	<b>Net</b>
Definite-lived intangible asset - Keveyis	5	\$ 11,000	\$ (5,500)	\$ 5,500	\$ 11,000	\$ (4,950)	\$ 6,050
Definite-lived intangible asset - Recorlev	14	121,000	(19,447)	101,553	121,000	(17,286)	103,714
Total intangible assets		<u>\$ 132,000</u>	<u>\$ (24,947)</u>	<u>\$ 107,053</u>	<u>\$ 132,000</u>	<u>\$ (22,236)</u>	<u>\$ 109,764</u>

As of March 31, 2024, expected amortization expense for intangible assets subject to amortization for the next five years and thereafter is as follows (in thousands):

2024 remaining	\$ 8,132
2025	10,843
2026	10,293
2027	8,643
2028	8,643
Thereafter	60,499
Total	<u>\$ 107,053</u>

**Note 8. Other accrued liabilities**

Other accrued liabilities consist of the following (in thousands):

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Accrued employee costs	\$ 10,368	\$ 16,956
Accrued supply chain costs	521	523
Accrued marketing costs	1,032	598
Accrued research and development costs	511	960
Accrued interest expense	6,332	1,374
Accrued other costs	3,627	3,099
Other accrued liabilities	<u>\$ 22,391</u>	<u>\$ 23,510</u>

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**Note 9. Long-term debt**

The components of debt are as follows (in thousands):

	March 31, 2024	December 31, 2023
Convertible senior notes	\$ 49,281	\$ 49,306
Less: unamortized debt issuance costs	(1,293)	(1,400)
Loan agreement	184,089	145,569
Less: unamortized debt issuance costs	(2,403)	(2,543)
Long-term debt, net of unamortized debt issuance costs	<u>\$ 229,674</u>	<u>\$ 190,932</u>

*Convertible senior notes*

In June 2020, Xeris Pharma completed a public offering of \$86.3 million aggregate principal amount of Xeris Pharma's 5.00% Convertible Senior Notes due 2025 (the "2025 Convertible Notes"), including \$11.3 million pursuant to the underwriters' option to purchase additional notes, which was exercised in full in July 2020. Since January 15, 2021, the 2025 Convertible Notes bear cash interest at the rate of 5.00% per annum, payable semi-annually in arrears on January 15 and July 15 of each year.

Xeris Pharma incurred debt issuance costs of \$5.1 million in connection with the issuance of the 2025 Convertible Notes. At any time before the close of business on the second scheduled trading day immediately before the maturity date, holders of 2025 Convertible Notes may convert their 2025 Convertible Notes at their option into shares of the Company's common stock, together, if applicable, with cash in lieu of any fractional share, at a conversion rate of 326.7974 shares of the Company's common stock per \$1,000 principal amount of 2025 Convertible Notes. In the second half of 2020, \$39.1 million in principal amount of 2025 Convertible Notes were converted into 13,171,791 shares of Xeris Pharma's common stock.

On September 29, 2023, the Company completed the exchange of \$32.0 million in aggregate principal amount of the 2025 Convertible Notes for \$33.6 million in aggregate principal amount of new 8.00% Convertible Notes due 2028 (the "2028 Convertible Notes" and together with the 2025 Convertible Notes, the "Convertible Notes"). As of March 31, 2024, the outstanding balance of the 2025 Convertible Notes was \$15.2 million and the outstanding balance of the 2028 Convertible Notes was \$33.6 million.

The 2025 Convertible Notes are governed by the terms of a base indenture for senior debt securities dated June 30, 2020 (the "2025 Base Indenture"), as supplemented by the first supplemental indenture dated June 30, 2020 (the "First Supplemental Indenture"), and the second supplemental indenture dated October 5, 2021 (the "Second Supplemental Indenture" and together with the 2025 Base Indenture and First Supplemental Indenture, the "2025 Indenture"), among the Company, as guarantor, Xeris Pharma, as issuer, and U.S. Bank Trust Company, National Association (f/k/a U.S. Bank National Association), as trustee (the "Trustee"). The 2028 Convertible Notes are governed by the terms of an indenture for senior debt securities dated September 29, 2023 (the "2028 Indenture" and together with the 2025 Indenture, the "Indentures") among the Company, as issuer, Xeris Pharma, as guarantor, and the Trustee. The 2025 Convertible Notes and the 2028 Convertible Notes will mature on July 15, 2025 and July 15, 2028, respectively, unless earlier converted or redeemed or repurchased.

The Convertible Notes are senior, unsecured obligations and are equal in right of payment with the issuer's existing and future senior, unsecured indebtedness, senior in right of payment to its future indebtedness, if any, that is expressly subordinated to the Convertible Notes, and effectively subordinated to its existing and future secured indebtedness to the extent of the value of the collateral securing that indebtedness. The Convertible Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company or Xeris Pharma is not a holder thereof) preferred equity, if any, of the Company's direct and indirect subsidiaries other than Xeris Pharma.

As a result of the transactions associated with the acquisition of Strongbridge, and pursuant to the Second Supplemental Indenture, the 2025 Convertible Notes are no longer convertible into shares of common stock of Xeris Pharma. Instead, subject to the terms and conditions of the 2025 Indenture, the 2025 Convertible Notes will be exchangeable into cash and shares of common stock of the Company in proportion to the transaction consideration payable pursuant to the transaction agreement for the acquisition of Strongbridge, and the "Reference Property" provisions in the 2025 Indenture.

The fair value of the Convertible Notes is determined using current interest rates based on credit ratings and the remaining term of maturity. As of March 31, 2024, the fair value of the Convertible Notes was approximately \$52.1 million. The fair value of the convertible debt was estimated using inputs for volatility, the Company's stock price, time to maturity, the risk-free rate and the Company's credit spread, some of which are considered Level 3 inputs in the fair value hierarchy disclosed in "Note 11 - Fair value measurement."

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*Loan agreement*

In September 2019, Xeris Pharma entered into an Amended and Restated Loan and Security Agreement (the "Oxford Loan Agreement") with Oxford Finance LLC ("Oxford"), as the collateral agent and a lender, and Silicon Valley Bank, as a lender ("SVB," and together with Oxford, the "Prior Lenders"). The Oxford Loan Agreement provided for the Prior Lenders to extend up to \$85.0 million in term loans to Xeris Pharma in three tranches, of which \$60.0 million was drawn down in September 2019.

In June 2020, Xeris Pharma paid a portion of the term loan equal to the sum of \$20.0 million, plus all accrued and unpaid interest. In November 2020, an additional \$3.5 million was drawn from the term loan.

In March 2022, the Company, Xeris Pharma and certain subsidiary guarantors of the Company entered into a Credit Agreement and Guaranty (as amended, modified or amended and restated from time to time, the "Hayfin Loan Agreement") with the lenders from time to time parties thereto (the "Lenders") and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the "Agent"), pursuant to which the Company and its subsidiaries party thereto granted a first priority security interest on substantially all of their assets, including intellectual property, subject to certain exceptions. The Hayfin Loan Agreement provided for the Lenders to extend \$100.0 million in term loans to the Company on the closing date and up to an additional \$50.0 million in delayed draw term loans during the one year period immediately following the closing date (collectively, the "Loans"). On December 28, 2022, the Company borrowed the full amount of such \$50.0 million delayed draw term loan under the Hayfin Loan Agreement. In conjunction with the execution of the Hayfin Loan Agreement, the Oxford Loan Agreement remaining balance of \$43.5 million and fees of \$2.1 million in connection with the loan repayment were paid. In addition to utilizing the proceeds to repay the obligations under the Oxford Loan Agreement in full, the proceeds were otherwise used for general corporate purposes.

On March 5, 2024, the Company, Xeris Pharma and certain subsidiary guarantors of the Company entered into an Amended and Restated Credit Agreement and Guaranty (the "Amended and Restated Credit Agreement") with the lenders from time to time parties thereto (the "New Lenders") and Hayfin Services LLP, as administrative agent for the New Lenders, pursuant to which the Company and its subsidiaries party thereto granted a first priority security interest on substantially all of their assets, including intellectual property, subject to certain exceptions. The Amended and Restated Credit Agreement amends and restates in its entirety the Hayfin Loan Agreement. The Amended and Restated Credit Agreement provided for the New Lenders to extend \$200.0 million in term loans (the "Tranche 1 Loans") to Xeris Pharma on the closing date and \$15.2 million in additional term loans (the "Tranche 2 Loans" and, together with the Tranche 1 Loans, the "2029 Loans") on any date after the closing date and through July 15, 2025. The Tranche 2 Loans may only be used to redeem the 2025 Convertible Notes. In conjunction with the execution of the Amended and Restated Credit Agreement, the aggregate principal balance of \$150.0 million plus all accrued and unpaid interest outstanding under the Hayfin Loan Agreement was continued under the Amended and Restated Credit Agreement as Tranche 1 Loans. In addition to utilizing the proceeds to repay the obligations under the Hayfin Loan Agreement in full, the proceeds of the Tranche 1 Loans will otherwise be used for general corporate purposes. After repayment, the 2029 Loans may not be re-borrowed.

The 2029 Loans will mature on March 5, 2029; provided, however, that the 2029 Loans will mature on (A) January 15, 2025 if the 2025 Convertible Notes are outstanding as of such date or (B) January 15, 2028 if the 2028 Convertible Notes are outstanding as of such date and, in both cases, either (i) the maturity date of the applicable notes has not been extended to a date not earlier than September 5, 2029 and (ii) the Company has not received net cash proceeds from one or more permitted equity raises or permitted raises of convertible debt which, together with no more than \$15.6 million of cash on hand, is sufficient to redeem and discharge the 2025 Convertible Notes or the 2028 Convertible Notes, as applicable, in full.

The 2029 Loans incur interest at a floating per annum rate in an amount equal to the sum of (i) 6.95% (or 5.95% if the replacement rate is in effect) plus (ii) the greater of (x) the forward-looking term rate based on SOFR for a three month tenor (or the replacement rate, if applicable), and (y) 2.00% per annum. The remaining balance of unamortized debt issuance costs have been reflected as a direct reduction to the loan balance. The effective interest rate of the 2029 Loans, including the amortization of debt discount and debt issuance costs, amounts to approximately 11.4%. The debt outstanding under the 2029 Loans approximates fair value due to the variable interest rate on the debt.

The Amended and Restated Credit Agreement allows Xeris Pharma to voluntarily prepay the outstanding amounts thereunder. Xeris Pharma is subject to an early prepayment fee equal to (i) for any prepayment that occurs on or prior to the second anniversary of the closing date, the applicable make-whole amount, (ii) for any prepayment that occurs after the second anniversary of the closing date but on or prior to the fourth anniversary of the closing date, the product of (x) the amount of any principal so prepaid, multiplied by (y) for any prepayment that occurs (A) after the second anniversary of the closing date and on or prior to the third anniversary of the closing date, five percent (5.00%), (B) after the third anniversary of the closing date and on or prior to the fourth anniversary of the closing date, three percent (3.00%), and (C) after the fourth anniversary of the closing date, zero percent (0.00%).

The Amended and Restated Credit Agreement contains customary representations and warranties, events of default and affirmative and negative covenants, including, among others, covenants that limit or restrict the Company's (and its subsidiaries) ability to incur

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additional indebtedness, grant liens, merge or consolidate, make acquisitions, pay dividends or other distributions or repurchase equity, make investments, dispose of assets and enter into certain transactions with affiliates, in each case subject to certain exceptions.

The Amended and Restated Credit Agreement was accounted for as a modification of debt in accordance with ASC 470-50, *Debt - Modifications and Extinguishments*, thus there was no gain or loss recognized on the transaction.

The following table sets forth the Company's future minimum principal payments on the Convertible Notes and the loan facility (in thousands):

2024 remaining	\$	—
2025		15,200
2026		—
2027		—
2028		33,574
Thereafter		200,000
	<b>\$</b>	<b>248,774</b>

For the three months ended March 31, 2024 and 2023, the Company recognized interest expense of \$7.0 million and \$6.2 million, respectively, of which \$0.6 million and \$0.5 million, respectively, related to the amortization of debt discount and issuance costs, respectively. Debt refinancing costs related to advisory and legal fees of \$2.7 million were recorded in the condensed consolidated statements of operations and comprehensive loss for the three months ended March 31, 2024.

**Note 10. Warrants**

As of March 31, 2024, the following warrants were outstanding:

	Outstanding Warrants	Exercise Price per Warrant	Expiration Date
<b>Warrants classified as liabilities:</b>			
2018 Term A Warrants	53,720	\$11.169	February 2025
2018 Term B Warrants	40,292	\$11.169	September 2025
	<u>94,012</u>		
<b>Warrants classified as equities:</b>			
Warrants in connection with CRG loan agreement	309,122	\$9.410	July 2024
Warrants in connection with CRG loan amendment in January 2018	978,628	\$12.760	January 2025
Warrants in connection with Avenue Capital loan agreement	209,633	\$2.390	May 2025
Warrants in connection with Avenue Capital loan agreement	209,633	\$2.390	December 2025
Warrants in connection with Horizon and Oxford loan agreement	125,999	\$3.130	December 2026
Warrants in connection with Armistice securities purchase agreement	5,119,454	\$3.223	February 2027
Warrants in connection with Hayfin Loan Agreement	1,315,789	\$2.280	March 2029
	<u>8,268,258</u>		

**Note 11. Fair value measurements**

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value measurements are classified and disclosed in one of the following categories:

Level 1: Measured using unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.

Level 2: Measured using quoted prices in active markets for similar assets or liabilities, quoted prices for identical or similar assets or liabilities in markets that are not active, or inputs, other than quoted prices in active markets, that are observable either directly or indirectly.

Level 3: Measured based on prices or valuation models that require inputs that are both significant to the fair value measurement and less observable from objective sources (i.e., supported by little or no market activity).

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

The following tables present the Company's fair value hierarchy for those assets and liabilities measured at fair value as of March 31, 2024 and December 31, 2023 (in thousands):

	<b>Total as of March 31, 2024</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<i>Assets</i>				
Cash and cash equivalents:				
Cash and money market funds	\$ 62,690	\$ 62,690	\$ —	\$ —
Investments:				
U.S. government securities	\$ 24,662	\$ 24,662	\$ —	\$ —
Other assets:				
Restricted cash	\$ 4,225	\$ 4,225	\$ —	\$ —
<i>Liabilities</i>				
Contingent value rights - current	\$ 1,021	\$ —	\$ —	\$ 1,021
Warrant liabilities	\$ 4	\$ —	\$ —	\$ 4

	<b>Total as of December 31, 2023</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<i>Assets</i>				
Cash and cash equivalents:				
Cash and money market funds	\$ 67,449	\$ 67,449	\$ —	\$ —
Investments:				
U.S. government securities	\$ 5,002	\$ 5,002	\$ —	\$ —
Other assets:				
Restricted cash	\$ 4,225	\$ 4,225	\$ —	\$ —
<i>Liabilities</i>				
Current portion of contingent value rights	\$ 19,109	\$ —	\$ —	\$ 19,109
Non-current contingent value rights	\$ 1,379	\$ —	\$ —	\$ 1,379
Warrant liabilities	\$ 8	\$ —	\$ —	\$ 8

*Contingent Value Rights*

As part of the 2021 acquisition of Strongbridge, the Company issued contingent value rights ("CVRs") representing additional contingent consideration of up to \$1.00 for each CVR upon the achievement of the following:

- Keveysis Milestone: \$0.25 per CVR, upon the earlier of the first listing of any patent in the FDA's Orange Book for Keveysis by the end of 2023 or the first achievement of at least \$40 million in net revenue of Keveysis in 2023;
- 2023 Recorlev Milestone: \$0.25 per CVR, upon the first achievement of at least \$40 million in net revenue of Recorlev in 2023; and
- 2024 Recorlev Milestone: \$0.50 per CVR, upon the first achievement of at least \$80 million in net revenue of Recorlev in 2024.



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As of March 31, 2024, there were approximately 74.4 million CVRs outstanding. Up to 8.1 million CVRs may be issued to holders of Strongbridge rollover options and assumed warrants upon the exercise thereof. CVRs are settleable in cash, common stock, or a combination of cash and common stock, at the Company's sole election.

Contingent consideration obligations are recorded at their estimated fair values and these obligations are revalued at each reporting period until the related contingencies are resolved. The CVRs are adjusted to fair value using the methods described above at the end of each reporting period. Significant changes which increase or decrease the probabilities of achieving the related milestones or shorten or lengthen the time required to achieve such events would result in corresponding increases or decreases in the fair values of these obligations.

The 2023 Keveyis milestone was achieved, triggering a milestone payment to CVR holders. In settlement of the milestone payment obligation, the Company issued 7,525,048 shares of common stock. The 2023 Recorlev Milestone was not achieved. A gain of \$3.0 million from the remeasurement of the CVR liability was recorded in the first quarter of 2024 in the condensed consolidated statements of operations and comprehensive loss as a result of changes in the Company's stock price prior to the issuance of the common stock in settlement of the CVR.

The Company has determined that the CVR liabilities' fair values are Level 3 items within the fair value hierarchy. The following table presents the change in the CVR liabilities (in thousands):

Balance at December 31, 2023	\$	20,488
CVR settlement		(16,100)
Change in fair value of CVRs		(3,367)
Balance at March 31, 2024	\$	<u>1,021</u>

**Note 12. Stock compensation plan**

In 2011, the Company adopted the 2011 Stock Option Issuance Plan (the "2011 Plan") and subsequently amended it to authorize the Board of Directors to issue up to 4,714,982 incentive stock option and non-qualified stock option awards.

The 2018 Stock Option and Incentive Plan (the "2018 Plan") was adopted by the Board of Directors in April 2018 and approved by the Company's stockholders in June 2018 to award up to 1,822,000 shares of common stock. The 2018 Plan replaced the 2011 Plan as the Board of Directors decided not to make additional awards under the 2011 Plan following the closing of the IPO, which occurred in June 2018. The 2018 Plan allows the compensation committee to make equity-based and cash-based incentive awards to the Company's officers, employees, directors and other key persons (including consultants). No grants of stock options or other awards may be made under the 2018 Plan after the tenth anniversary of the effective date.

As of March 31, 2024, there were 2.1 million shares of common stock available for future issuance under the 2018 Plan.

The 2018 Employee Stock Purchase Plan (the "ESPP") was adopted by the Board of Directors in April 2018 and approved by the Company's stockholders in June 2018 to issue up to 193,000 shares of common stock to participating employees. Through the ESPP, eligible employees may authorize payroll deductions of up to 15% of their compensation to purchase up to the number of shares of common stock determined by dividing \$25,000 by the closing market price of Xeris common stock on the offering date. The purchase price per share at each purchase date is equal to 85% of the lower of (i) the closing market price per share of Xeris common stock on the employee's offering date or (ii) the closing market price per share of Xeris common stock on the purchase date. Each offering period has a six-month duration and purchase interval. As of March 31, 2024, there were 0.4 million shares available for issuance under the ESPP.

The Equity Inducement Plan (the "Inducement Plan") was adopted by the Board of Directors in February 2019. The Inducement Plan allows the Company to make stock option or restricted stock unit awards to prospective employees of the Company as an inducement to such individuals to commence employment with the Company. The Company uses this Inducement Plan to help it attract and retain prospective employees who are necessary to support the commercialization of products and the expansion of the Company generally. As of March 31, 2024, there were 1.6 million shares of common stock available for future issuance under the Inducement Plan.

*Assumed Plans*

On the acquisition date of Strongbridge, the Company assumed all then-outstanding stock options and shares available and reserved for issuance under some legacy equity incentive plans of Strongbridge, including the Strongbridge 2015 equity compensation plan and Strongbridge 2017 inducement plan (collectively, the "Assumed Plans"). Shares reserved under the Assumed Plans will be available for future grants. The Company also assumed all then-outstanding stock options from the rest of the legacy equity incentive plans of Strongbridge without assuming the shares available and reserved for issuance under these plans. The number of shares subject to stock options outstanding under all Strongbridge legacy equity incentive plans are included in the tables below. As of March 31, 2024, there were 7.3 thousand shares reserved for future grants under the Assumed Plans.

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*Stock options*

Stock options are granted with an exercise price equal to the market price of the Company's stock at the date of grant. Stock option awards typically vest over either two, three or four years after the grant date and expire seven to ten years from the grant date.

The fair value of each option is estimated on the date of grant using a Black-Scholes option valuation model that uses the assumptions noted in the following table. The expected term of options represents the period of time that options granted are expected to be outstanding. The risk-free interest rate for periods during the contractual life of the option is based on the United States Treasury yield curve in effect at the time of grant. The expected stock price volatility assumption is based on the historical volatilities of a peer group of publicly traded companies as well as the historical volatility of the Company's common stock, since the Company began trading subsequent to the IPO in June 2018, over the period corresponding to the expected life as of the grant date. The expected dividend yield is based on the expected annual dividend as a percentage of the market value of the Company's ordinary shares as of the grant date.

Stock option activity under the 2011 Plan, 2018 Plan, Inducement Plan and Assumed Plans for the three months ended March 31, 2024 was as follows:

	Number of Options	Weighted Average Exercise Price Per Share	Weighted Average Contractual Life (Years)
Outstanding - December 31, 2023	9,199,744	\$5.22	3.84
Exercised	(229,417)	2.00	
Forfeited	(94)	4.58	
Expired	(26,556)	5.44	
Outstanding - March 31, 2024	<u>8,943,677</u>	\$5.29	3.56
Vested and expected to vest at March 31, 2024	<u>8,943,677</u>	\$5.29	3.56
Exercisable - March 31, 2024	<u>8,796,588</u>	\$5.30	3.50

At March 31, 2024, there was a total of \$0.4 million of unrecognized stock-based compensation expense related to stock options that is expected to be recognized over a weighted average period of 0.7 years.

*Restricted Stock Units*

The Company grants Restricted Stock Units ("RSUs") to employees. RSUs that are granted vest over either three or four years in equal annual installments beginning on the one-year anniversary of the date of grant, provided that the employee is employed by the Company on such vesting date. If and when the RSUs vest, the Company will issue one share of common stock for each whole RSU that has vested, subject to satisfaction of the employee's tax withholding obligations. Upon vesting and settlement of RSUs or exercise of stock options, at the election of the grantee, the Company does not collect withholding taxes in cash from employees. Instead, the Company withholds upon settlement as RSUs vest, or as stock options are exercised, the portion of those shares with a fair market value equal to the amount of the minimum statutory withholding taxes due. The withheld shares are accounted for as repurchases of common stock. Stock-based compensation expense related to RSUs is recognized on a straight-line basis over the employee's requisite service period.

A summary of outstanding RSU awards and the activity for the three months ended March 31, 2024 was as follows:

	Number of Units	Weighted Average Grant Date Fair Value Per Share
Unvested balance - December 31, 2023	11,579,548	\$ 1.83
Granted	9,111,250	2.46
Vested	(3,776,815)	2.09
Forfeited	(136,118)	1.94
Unvested balance - March 31, 2024	<u>16,777,865</u>	\$ 2.11

As of March 31, 2024, there was \$31.1 million of unrecognized stock-based compensation expense related to RSUs, which is expected to be recognized over the weighted-average remaining vesting period of 2.3 years.

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The following table summarizes the reporting of total stock-based compensation expense resulting from stock options, RSUs and the ESPP (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Research and development	\$ 337	\$ 322
Selling, general and administrative	3,430	2,242
Total stock-based compensation expense	<u>\$ 3,767</u>	<u>\$ 2,564</u>

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**Note 13. Leases**

The Company has non-cancellable operating leases for office and laboratory space, which expire at various times in 2031 and 2037. The non-cancellable lease agreements provide for monthly lease payments, which increase during the term of each lease agreement.

All of the Company's leases are classified as operating leases, which are included as operating lease right-of-use assets and current and non-current operating lease liabilities in the condensed consolidated balance sheets. The Company's operating lease costs are included in operating expenses in the accompanying condensed consolidated statements of operations and comprehensive loss. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

A majority of the Company's lease agreements include fixed rental payments. Certain lease agreements include fixed rental payments that are adjusted periodically by a fixed rate. The fixed payments, including the effects of changes in the fixed rate or amount, and renewal options reasonably certain to be exercised, are included in the measurement of the related lease liability. The exercise of lease renewal options is at the Company's sole discretion. The depreciable life of assets and leasehold improvements are limited by the expected lease term, which includes renewal options reasonably certain to be exercised. The majority of the Company's real estate leases require that the Company pay maintenance, real estate taxes and insurance in addition to rent. These payments are generally variable and based on actual costs incurred by the lessor. Therefore, these amounts are not included in the consideration of the contract when determining the right-of-use asset and lease liability but are reflected as variable lease expenses.

As the interest rate implicit in the lease is not readily determinable, the Company uses the incremental borrowing rate as the discount rate. The Company considers observable inputs as of the effective date of the ASC 842 adoption including the credit rating, existing borrowings and other relevant borrowing rates, such as risk-free rates like the United States Treasury rate, and then adjusting as necessary for the appropriate lease term. The incremental borrowing rate is reassessed if there is a change to the lease term or if a modification occurs and it is not accounted for as a separate contract. As of March 31, 2024, the Company's operating leases had a weighted-average remaining lease term of 11.4 years and a weighted-average discount rate of 11.9%.

Supplemental cash flow information related to the Company's operating leases was as follows (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows for operating leases	\$ 365	\$ 478

The Company reports the amortization of operating lease right-of-use assets and the change in operating lease liabilities on a net basis in other in the operating activities of the accompanying condensed consolidated statements of cash flows.

The components of lease expense were as follows (in thousand):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Lease cost		
Operating lease expense	\$ 1,340	\$ 413
Variable lease cost	241	350
Sublease income	(53)	(54)
<b>Total lease cost</b>	<b>\$ 1,528</b>	<b>\$ 709</b>

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

As of March 31, 2024, maturities of lease liabilities are summarized as follows (in thousands):

2024 remaining	\$	3,130
2025		6,080
2026		6,232
2027		6,389
2028		6,549
Thereafter		45,441
Total lease payments		73,821
Less: Effect of discounting to net present value		(34,800)
Present value of lease liabilities	\$	39,021
Operating lease liabilities, current	\$	4,624
Operating lease liabilities, non-current		34,397
Total operating lease liabilities	\$	39,021

**Note 14. Commitments and contingencies**

**Commitments**

Commitments to Taro

The Company has a supply agreement with Taro Pharmaceuticals North America, Inc. ("Taro") to produce Kevevys. In 2023, the Company amended the agreement to extend the initial term until March 2027. As part of the agreement, as amended, the Company has agreed to certain annual minimum marketing spend requirements and minimum purchase order quantities for each year, which in the case of the minimum purchase order quantities, is based on the previous year's purchases.

Leases

As of March 31, 2024, the Company had unused letters of credit of \$4.2 million, which were issued primarily to secure leases. These letters of credit are collateralized by \$4.2 million of restricted cash, which is recorded in other assets in the condensed consolidated balance sheets.

**Contingencies**

Litigation

From time to time, the Company may become involved in various legal actions arising in the ordinary course of business. As of March 31, 2024, management was not aware of any existing, pending or threatened legal actions that would have a material impact on the financial position or results of operations of the Company.

Long Term Debt

In the event (i) the 2025 Convertible Notes are still outstanding as of January 15, 2025 or (ii) the 2028 Convertible Notes are still outstanding as of January 15, 2028 and, in each case, the maturity date has not been extended to a date not earlier than September 5, 2029, then unless the Company has received net cash proceeds from one or more permitted equity raises or permitted raises of convertible debt which, together with no more than \$15.6 million of cash on hand, is sufficient to redeem and discharge the 2025 Convertible Notes or 2028 Convertible Notes, as applicable, in full, the loans outstanding under the Hayfin Loan Agreement will mature on January 15, 2025 in the case of outstanding 2025 Convertible Notes and January 15, 2028 in the case of outstanding 2028 Convertible Notes. As disclosed in "Note 9 - Long-term debt", the Amended and Restated Credit Agreement provided for the New Lenders to extend \$15.2 million Tranche 2 Loans on any date after March 5, 2024 and through July 15, 2025 solely for the purpose of redeeming the 2025 Convertible Notes.

**XERIS BIOPHARMA HOLDINGS, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

**Note 15. Net loss per common share**

Basic and diluted net loss per common share are determined by dividing net loss applicable to common stockholders by the weighted average common shares outstanding during the period. For all periods presented, the shares issuable upon conversion, exercise or vesting of Convertible Notes, warrants, stock option awards and RSUs have been excluded from the calculation because their effects would be anti-dilutive. Therefore, the weighted average common shares outstanding used to calculate both basic and diluted net loss per common share are the same.

The following potentially dilutive securities were excluded from the computation of diluted weighted average common shares outstanding due to their anti-dilutive effect:

	<b>As of March 31,</b>	
	<b>2024</b>	<b>2023</b>
Shares to be issued upon conversion of Convertible Notes	15,939,216	15,416,667
Vested and unvested stock options	8,943,677	9,567,754
Restricted stock units	16,777,865	10,561,349
Warrants	8,362,270	8,362,270
Total anti-dilutive securities excluded from EPS computation <sup>1</sup>	<u>50,023,028</u>	<u>43,908,040</u>

<sup>1</sup> Total anti-dilutive securities exclude CVRs which are settleable in cash, additional Xeris Biopharma shares, or a combination, at the election of the Company.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Cautionary statements for forward-looking information

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and notes to those financial statements appearing elsewhere in this Quarterly Report on Form 10-Q and with the audited financial statements and the notes to those financial statements included in the Annual Report on Form 10-K filed on March 6, 2024 with the U.S. Securities and Exchange Commission. In addition to financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. All statements in this document other than statements of historical fact are, or could be, "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "will," "would," "may," "should," "expects," "focus," "goal," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue," and terms of similar meaning are also generally intended to identify forward-looking statements. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors, including without limitation, the regulatory approval of our product candidates, our ability to market and sell our products and product candidates if approved, and factors discussed in Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2023 and elsewhere in this Quarterly Report on Form 10-Q. Any forward-looking statements contained herein speak only as of the date hereof, and Xeris expressly disclaims any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

### Overview

Unless otherwise indicated, references to "Xeris," the "Company," "we," "our" and "us" in this Quarterly Report on Form 10-Q refer to Xeris Biopharma Holdings, Inc. Throughout this document, unless otherwise noted, references to Gvoke include Gvoke PFS, Gvoke HypoPen, Gvoke Kit and Ogluo (glucagon).

We are focused on building an innovative, self-sustaining, growth-oriented biopharmaceutical company committed to improving patients' lives by developing and commercializing clinically meaningful products across a range of therapies. We are uniquely positioned to achieve this through our three commercial products and our proprietary formulation science (XeriSol and XeriJect), which generates partnerships and enhances our product candidates.

### Outlook and strategies

Our goal is to build an innovative, self-sustaining, growth-oriented biopharmaceutical company committed to improving patients' lives by developing and commercializing clinically meaningful products across a range of therapies. To achieve our goal, we are pursuing the following strategies:

- **Drive growth through effective commercial execution of our innovative products.** We have three innovative commercial products (Gvoke, Keveyis, and Recorlev) all of which fill unique, unmet needs. Additionally, Gvoke and Recorlev are in the very early stages of their product lifecycles and both leverage our experienced and growing leadership presence in the endocrinology community. We are focused on executing against the opportunities made possible by Gvoke, Recorlev, and Keveyis in order to maintain our momentum of growth and enable the financial self-sufficiency of our Company.
- **Continue to leverage our proprietary formulation science and expertise to develop our internal new product candidates.** We have established a proven capability to bring new and innovative products through the development and regulatory process to successful commercialization. XeriSol and XeriJect have broad application and have the potential to be utilized across a range of potential product candidates in multiple therapeutic areas. Our immediate focus is on developing XP-8121, a once weekly subcutaneous injection of levothyroxine, and eventually generating significant benefits for patients and value for our company.
- **Collaborate with pharmaceutical and biotechnology companies to apply our formulation science to enhance the formulations of their proprietary products and candidates.** We are pursuing formulation and development partnerships to apply our XeriSol and XeriJect formulation platforms to enhance the drug delivery and clinical profile of other companies' proprietary drugs and biologics. We currently are collaborating with several major pharmaceutical companies on the development of formulations of their proprietary therapeutics with XeriSol or XeriJect. Our strategic goal is to ultimately enter into commercial licensing agreements with these partners upon successful completion of formulation development.

We believe these three distinct pillars of our strategy can bring new products to market and transform the lives of patients with life-impacting diseases and ultimately drive value for Xeris' shareholders. Pursuing these strategies provides Xeris with a range of value driving opportunities that are incremental to the value already realized by the Xeris enterprise.

### Commercial Products

Our top priority is maximizing the potential of our three commercial products:

- *Gvoke* is a ready-to-use, liquid-stable glucagon for the treatment of severe hypoglycemia. The product is indicated for use in pediatric and adult patients with diabetes age 2 years and above and can be administered in 2 simple steps. The estimated total addressable market for this drug is approximately \$5.0 billion in the United States.

- *Recorlev* is a cortisol synthesis inhibitor approved for the treatment of endogenous hypercortisolemia in adult patients with Cushing's syndrome for whom surgery is not an option or has not been curative. Endogenous Cushing's syndrome is a rare but serious and potentially fatal endocrine disease caused by chronic elevated cortisol exposure. The estimated total addressable market for this therapy is approximately \$3.0 billion in the United States.
- *Keveyis* is the first therapy approved in the United States to treat hyperkalemic, hypokalemic, and related variants of Primary Periodic Paralysis ("PPP"). PPP is a rare genetic, neuromuscular disorder that can cause extreme muscle weakness and/or paralysis; some forms are also commonly associated with myotonia or muscle stiffness. The estimated total addressable market for this therapy is greater than \$0.5 billion in the United States.

#### ***Our proprietary formulation capabilities***

Our company name, Xeris, is derived from the ancient Greek word *xēros* meaning 'dry' or 'without water/non-aqueous'. Our proprietary, non-aqueous formulation capabilities are designed to enable the convenient injection of medicines previously uninjectable or poorly injectable when utilizing aqueous approaches. Both XeriSol and XeriJect offer the opportunity to create ready-to-use, room-temperature stable, highly concentrated, injectable formulations of both small and large molecules. These proprietary formulation capabilities can enable subcutaneous (SC) or intramuscular (IM) administration in lieu of intravenous (IV) infusion, allow for convenient, cost-effective storage, and provide an improved patient, caregiver, and healthcare provider experience. XeriSol and XeriJect have broad applications and enable us to develop our own internal product development candidates in endocrinology, neurology and other therapeutic areas. They also enable us to pursue formulation and development partnerships pursuant to which our proprietary formulation science is applied with the goal of enhancing the product formulation, delivery and clinical profile of other companies' proprietary drugs and biologics.

#### ***Development of product candidates***

##### ***Once Weekly Subcutaneous Injection of Levothyroxine (XP-8121)***

XP-8121 is a novel formulation for subcutaneous administration that could potentially mitigate many of the challenges associated with oral formulations, such as identification of an ideal dose due to absorption variation and medication adherence for patients who have difficulty maintaining a stable, therapeutic serum level. Preclinical studies of XP-8121 showed a sustained plasma exposure profile and similar highest concentration of a drug in the blood, or C<sub>max</sub>, when compared with equivalent doses of the oral formulation. We conducted a Phase 1 study of XP-8121 to evaluate the pharmacokinetics, safety and tolerability, and potential for weekly dosing in the treatment of hypothyroidism.

##### ***Levothyroxine and Hypothyroidism***

The thyroid gland is responsible for the synthesis, storage, and release of metabolic hormones including thyroxine (T4) and triiodothyronine (T3). These hormones are crucial in the regulation of critical metabolic processes and are vital for normal growth and development during fetal life, infancy, and childhood.

Therapeutically, levothyroxine is administered as a replacement for deficient thyroid hormones. The goal of the therapy is restoration of the euthyroid state which can reverse the clinical manifestations of hypothyroidism and significantly improve quality of life. The treatment of choice for correction of hypothyroidism is currently continuous daily oral administration of levothyroxine. It is one of the most widely prescribed drug products in the United States, but the complexity of maintaining biochemical and clinical euthyroidism in patients undergoing treatment with oral levothyroxine is challenging. It has been reported that nearly 40% of patients undergoing treatment with oral levothyroxine are either over- or under-treated due to factors that include, but are not limited to, drug formulation, use of the drug with food, adherence to the drug, use of concomitant medications, and pre-existing medical conditions. Many patients failing to reach target thyroid stimulating hormone ("TSH") levels are managed by simply increasing their levothyroxine daily dose. However, levothyroxine is a drug with a narrow therapeutic index, meaning that relatively small deviations from the proper dose can cause a clinically meaningful shift in pharmacological effects when administered to a patient; thus, the titration of levothyroxine oral drug may be a tailored and incremental process.

The Phase 1 clinical study was a single ascending dose crossover design in 30 healthy participants to compare matching doses of oral levothyroxine (Synthroid) and subcutaneous XP-8121. The primary endpoints of the study were to characterize the absorption and elimination kinetics of XP-8121 and compare bioavailability of XP-8121 to oral levothyroxine. Secondary endpoints were safety and tolerability of XP-8121.

In October 2022, we reported positive topline Phase 1 data of XP-8121. The data showed that subjects receiving XP-8121 subcutaneous had slower absorption, lower peak plasma, and higher extended exposure compared to Synthroid PO at the comparable dose of 600 µg. In addition, exposure was proportional over the range of ascending XP-8121 doses studied. Simulations based on a population pharmacokinetic model indicated that exposure from weekly XP-8121 1200 µg SC doses overlapped daily Synthroid PO 300 µg suggesting a dose conversion factor of 4x. Importantly, single SC doses of XP-8121 at all doses were generally well-tolerated and the XP-8121 doses studied were generally comparable to Synthroid 600 µg PO with respect to the safety findings. In June 2023, we initiated a non-randomized, open-label, single arm, self-controlled Phase 2 study to determine a target dose conversion factor from stably dosed oral levothyroxine to XP-8121 in patients with hypothyroidism and also assess the safety and tolerability after once-weekly subcutaneous injections. As of December 2023, the study was fully enrolled and should be completed in the first half of 2024.



### **Patents**

We currently own 157 patents issued globally, including composition of matter patents covering our ready-to-use glucagon formulation that expire in 2036. Included in the total patents, we have 61 granted patents globally related to our platform technologies and 8 patents granted in the United States and listed in the United States FDA Orange Book covering proprietary formulations of levoketoconazole (the active pharmaceutical ingredient in Recorlev) and the uses of such formulations in treating certain endocrine-related diseases and syndromes. The latter includes United States Patent Nos. 11,020,393, 11,278,547 and 11,903,940, which were granted on June 1, 2021, March 22, 2022, and February 20, 2024, respectively, and which provide patent protection through 2040 for the use of Recorlev in the treatment of certain patients with persistent or recurrent Cushing's syndrome.

### **Financing**

We have funded our operations to date primarily with proceeds from the sale of our preferred and common stock and debt financing.

For the three months ended March 31, 2024 and March 31, 2023, we reported net losses of \$19.0 million and \$16.8 million, respectively. We have not been profitable since inception, and, as of March 31, 2024, our accumulated deficit was \$636.0 million. In the near term, we expect to continue to incur significant expenses, operating losses and net losses as we:

- continue our marketing and selling efforts related to commercialization of Gvoke, Recorlev and Keveyis;
- continue our research and development efforts;
- continue to operate as a public company; and
- continue to fund our operations with an increased cost of borrowing due to a higher interest rate environment and tighter lending requirements.

We may continue to seek public equity and debt financing to meet our capital requirements. There can be no assurance that such funding may be available to us on acceptable terms, or at all, or that we will be able to commercialize our product candidates, if approved. In addition, we may not be profitable even if we commercialize any of our product candidates.

### **Components of our Results of Operations**

The following discussion sets forth certain components of the statement of operations of Xeris for the three months ended March 31, 2024 and 2023 as well as factors that impact those items.

#### **Product revenue, net**

Product revenue, net, represents gross product sales less estimated allowances for patient copay assistance programs, prompt payment discounts, payor rebates, chargebacks, service fees, and product returns, all of which are recorded at the time of sale to the pharmaceutical wholesaler or other customer. We apply significant judgment and estimates in determining some of these allowances. If actual results differ from our estimates, we make adjustments to these allowances in the period in which the actual results or updates to estimates become known.

#### **Royalty, contract and other revenue**

Royalty and contract revenue is recognized as earned in accordance with contract terms when it can be reasonably estimated and collectability is reasonably assured.

#### **Cost of goods sold**

Cost of goods sold primarily includes product costs, which include all costs directly related to the purchase of raw materials, charges from our contract manufacturing organizations, and manufacturing overhead costs, as well as shipping and distribution charges. Cost of goods sold also includes losses from excess, slow-moving or obsolete inventory and inventory purchase commitments, if any. Manufacturing costs for Gvoke and Recorlev incurred prior to approval and initial commercialization were expensed as research and development expenses.

#### **Research and development expenses**

Research and development expenses consist of expenses incurred in connection with the discovery and development of our products and product candidates. We recognize research and development expenses as incurred. Research and development expenses that are paid in advance of performance are capitalized until services are provided or goods are delivered. Research and development expenses include:

- the cost of acquiring and manufacturing preclinical study and clinical trial materials and manufacturing costs related to commercial production and scale-up until a product is approved and initially available for commercial sale;
- expenses incurred under agreements with contract research organizations ("CROs") as well as investigative sites and consultants that conduct our preclinical studies and clinical trials;
- personnel-related expenses, which include salaries, benefits and stock-based compensation;
- laboratory materials and supplies used to support our research activities;
- outsourced product development services;
- expenses relating to regulatory activities, including filing fees paid to regulatory agencies; and
- allocated expenses for facility-related costs.

Research and development activities are central to our business model. We expect to continue to incur significant research and development expenses as we advance our pipeline candidates and in particular plan and conduct clinical trials, prepare regulatory filings for our product candidates, and utilize internal resources to support these efforts. Our research and development costs have declined as compared to previous levels as a result of directing significant funding to our commercial activities.

Our research and development expenses may vary significantly over time due to uncertainties relating to the timing and results of our clinical trials, feedback received from interactions with the FDA and the timing of regulatory approvals.

***Selling, general and administrative expenses***

Selling, general and administrative expenses consist primarily of compensation and related personnel costs, marketing and selling expenses, professional fees and facility costs not otherwise included in research and development expenses.

***Amortization of intangible assets***

Amortization of intangible assets relates to the amortization of our products: Keveyis and Recorlev. These two intangible assets are being amortized over a five-year and fourteen-year period, respectively, using the straight-line method.

***Other income (expense)***

Other income (expense) consists primarily of interest expense related to our convertible debt, senior secured credit facility, interest income earned on deposits and investments, debt refinancing costs and gains and losses on the change in fair value of the CVRs.

## Results of Operations

The following table summarizes our results of operations for the three months ended March 31, 2024 and 2023 (in thousands):

	Three Months Ended March 31,		Variance	
	2024	2023	\$	%
<b>Product revenue:</b>				
Gvoke	\$ 16,579	\$ 15,033	\$ 1,546	10.3
Keveyis	13,085	12,755	330	2.6
Recorlev	10,599	4,477	6,122	136.7
Product revenue, net	40,263	32,265	7,998	24.8
Royalty, contract and other revenue	375	931	(556)	(59.7)
Total revenue	40,638	33,196	7,442	22.4
<b>Cost and expenses:</b>				
Cost of goods sold, excluding amortization of intangible assets	5,971	5,319	652	12.3
Research and development	7,821	4,838	2,983	61.7
Selling, general and administrative	38,380	33,605	4,775	14.2
Amortization of intangible assets	2,711	2,711	—	—
Total cost and expenses	54,883	46,473	8,410	18.1
Loss from operations	(14,245)	(13,277)	(968)	7.3
<b>Other income (expense):</b>				
Interest and other income	1,923	1,300	623	47.9
Debt refinancing costs	(2,690)	—	(2,690)	nm
Interest expense	(7,032)	(6,216)	(816)	13.1
Change in fair value of warrants	4	—	4	nm
Change in fair value of contingent value rights	3,367	1,359	2,008	nm
Total other expense	(4,428)	(3,557)	(871)	24.5
Net loss before benefit from income taxes	(18,673)	(16,834)	(1,839)	10.9
Income tax (expense) benefit	(307)	—	(307)	nm
Net loss	\$ (18,980)	\$ (16,834)	\$ (2,146)	12.7

nm: not meaningful

### Product revenue, net

Gvoke net revenue increased by \$1.5 million or 10.3% for the three months ended March 31, 2024 compared to the three months ended March 31, 2023. This increase was due to Gvoke prescription growth, partially offset by changes in sales channel inventory.

Keveyis net revenue increased by \$0.3 million or 2.6% for the three months ended March 31, 2024 compared to the three months ended March 31, 2023. The increase was driven primarily by an increase in net pricing partially offset by a slight decrease in patient demand.

Recorlev net revenue increased by \$6.1 million or 136.7% for the three months ended March 31, 2024 compared to the three months ended March 31, 2023. This increase was driven primarily by increases in the number of patients on therapy.

### Cost of goods sold

Cost of goods sold increased by \$0.7 million or 12.3% for the three months ended March 31, 2024 compared to the three months ended March 31, 2023. The increase was mainly attributable to higher product sales.

### Research and development expenses

Research and development expenses increased by \$3.0 million or 61.7% for the three months ended March 31, 2024 compared to the three months ended March 31, 2023, driven by strategic investments in our pipeline, notably XP-8121, and our emerging technology partnership business as well as higher personnel costs.

### Selling, general and administrative expenses

Selling, general and administrative expenses increased by \$4.8 million or 14.2% for the three months ended March 31, 2024 compared to the three months ended March 31, 2023, due to higher personnel costs and rent expenses related to our headquarter lease which commenced in April 2023.

***Amortization of intangible assets***

For the three months ended March 31, 2024 and March 31, 2023, amortization of intangible assets were both \$2.7 million.

***Other income (expense)***

For the three months ended March 31, 2024, interest expense increased \$0.8 million or 13.1% compared to the three months ended March 31, 2023. The increase was primarily due to a higher principal amount and increased interest rates.

Other expense in the three months ended March 31, 2024 included debt refinancing costs of \$2.7 million related to the third party debt arrangements for advisory and legal fees.

For the three months ended March 31, 2024, change in fair value of contingent value rights was a gain of \$3.4 million compared to \$1.4 million for the three months ended March 31, 2023. The gain in the first quarter of 2024 were primarily due to the remeasurement of the CVR liability as a result of changes in our stock price prior to issuance of the common stock issued in settlement of the CVR.

**Liquidity and Capital Resources**

Our primary uses of cash are to fund costs related to the manufacturing, marketing and selling of products, the research and development of our product candidates, general and administrative expenses and working capital requirements. Historically, we have funded our operations primarily through private placements of convertible preferred stock, public equity offerings of common stock, and issuance of debt.

On January 2, 2022, we entered into a securities purchase agreement in connection with the private placement of our common stock with Armistice for aggregate gross proceeds of approximately \$30.0 million and completed the transaction on January 3, 2022. In January 2022, we filed a shelf registration statement on Form S-3 with the SEC, which was declared effective on February 7, 2022, and which covers the offering, issuance and sale by us of up to an aggregate of \$250.0 million of our common stock, preferred stock, debt securities, warrants and/or units.

In March 2022, we, Xeris Pharma and certain subsidiary guarantors, entered into a Credit Agreement and Guaranty (the "Hayfin Loan Agreement") with the lenders from time to time parties thereto (the "Lenders") and Hayfin Services LLP, as administrative agent for the Lenders, pursuant to which we and our subsidiaries party thereto granted a first priority security interest on substantially all of our assets, including intellectual property, subject to certain exceptions. The Hayfin Loan Agreement provided for the Lenders to extend \$100.0 million in term loans to us on the closing date and up to an additional \$50.0 million in delayed draw term loan(s) during the one year period immediately following the closing date (collectively, the "Loans"). On December 28, 2022, we borrowed the full amount of such \$50.0 million delayed draw term loan under the Hayfin Loan Agreement. In conjunction with the execution of the Hayfin Loan Agreement, the Oxford Loan Agreement balance of \$43.5 million was repaid in full and fees of \$2.1 million in connection with the loan repayment were paid. In addition to utilizing the proceeds to repay the obligations under the Oxford Loan Agreement in full, the proceeds were otherwise used for general corporate purposes. After repayment, the Loans may not be re-borrowed.

In September 2023, we completed the exchange of \$32.0 million in aggregate principal amount of the 2025 Convertible Notes for \$33.6 million in aggregate principal amount of the 2028 Convertible Notes. As of March 31, 2024, the outstanding balance of the 2025 Convertible Notes was \$15.2 million and the outstanding balance of the 2028 Convertible Notes was \$33.6 million.

In March 2024, we, Xeris Pharma and certain subsidiary guarantors, entered into an Amended and Restated Credit Agreement and Guaranty (the "Amended and Restated Credit Agreement") with the lenders from time to time parties thereto (the "New Lenders") and Hayfin Services LLP, as administrative agent for the New Lenders, pursuant to which the Company and its subsidiaries party thereto granted a first priority security interest on substantially all of their assets, including intellectual property, subject to certain exceptions. The Amended and Restated Credit Agreement amended and restated the Hayfin Loan Agreement in its entirety. The Amended and Restated Credit Agreement provided for the New Lenders to extend \$200.0 million in term loans to the Company on the closing date and up to an additional \$15.2 million in additional term loans, which additional term loans are available only to redeem the Company's existing 2025 Convertible Notes.

***Capital Resources and Funding Requirements***

We have incurred operating losses since inception, and we have an accumulated deficit of \$636.0 million at March 31, 2024. Based on our current operating plans and existing working capital at March 31, 2024, we believe that our cash resources are sufficient to sustain operations and capital expenditure requirements for at least the next 12 months. We expect to incur substantial additional expenditures in the near term to support the marketing and selling of Gvoke, Recorlev and Keveyis as well as our ongoing research and development activities. We expect to continue to incur net losses for at least the next 12 months. Our ability to fund marketing and selling of Gvoke, Recorlev and Keveyis, as well as our product development and clinical operations, including completion of future

clinical trials, will depend on the amount and timing of cash received from product revenue and potential future financings. Our future capital requirements will depend on many factors, including, but not limited to:

- our degree of success in commercializing Gvoke, Recorlev and Keveyis;
- the costs of commercialization activities, including product marketing, sales and distribution;
- the costs, timing and outcomes of clinical trials and regulatory reviews associated with our product candidates;
- the effect on our product development activities of actions taken by the FDA or other regulatory authorities;
- the number and types of future products we develop and commercialize;
- the emergence of competing technologies and products and other adverse market developments; and
- the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property-related claims.

As we continue the marketing and selling of Gvoke, Recorlev and Keveyis, we may not generate a sufficient amount of product revenue to fund our cash requirements. Accordingly, we may need to obtain additional financing in the future which may include public or private debt and/or equity financings. As detailed in "Note 1 – Liquidity and capital resources" above, there can be no assurance that such funding may be available to us on acceptable terms, or at all, or that we will be able to successfully market and sell Gvoke, Recorlev and Keveyis.

#### **Cash Flows**

<b>(in thousands)</b>	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Net cash used in operating activities	\$ (20,303)	\$ (26,140)
Net cash used in by investing activities	(19,650)	(43,979)
Net cash provided by/(used in) financing activities	35,194	(863)

#### *Operating activities*

Net cash used in operating activities was \$20.3 million for the three months ended March 31, 2024, compared to \$26.1 million for the three months ended March 31, 2023. The decrease in net cash used in operating activities was primarily driven by reduced working capital usage, partially offset by changes to the fair value of contingent value rights. For a discussion regarding product revenue, net and increases in spending, refer to "Results of Operations" included in this "Item 2 - Management's Discussion and Analysis of Financial Condition and Results of Operations" of Part I of this Quarterly Report on Form 10-Q.

#### *Investing activities*

Net cash used in investing activities was \$19.7 million for the three months ended March 31, 2024, compared to net cash provided by investing activities of \$44.0 million for the three months ended March 31, 2023. Cash used in investing activities in 2024 was primarily due to the purchase of short-term investments.

#### *Financing activities*

Net cash provided by financing activities was \$35.2 million for the three months ended March 31, 2024, compared to net cash used in financing activities of \$0.9 million for the three months ended March 31, 2023. The cash provided by financing activities in 2024 was primarily due to the net proceeds of \$38.2 million of the debt refinancing from the Amended and Restated Credit Agreement.

#### **CRITICAL ACCOUNTING POLICIES AND USE OF ESTIMATES AND ASSUMPTIONS**

Our Annual Report on Form 10-K for the year ended December 31, 2023 describes the critical accounting policies for which management uses significant judgments and estimates in the preparation of our consolidated financial statements. There have been no significant changes to our critical accounting policies since December 31, 2023.

#### **NEW ACCOUNTING STANDARDS**

Refer to "Note 2 - Basis of presentation and summary of significant accounting policies and estimates," for a description of recent accounting pronouncements applicable to our financial statements.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to certain market risks arising from transactions in the normal course of business, principally risk associated with interest rate and foreign currency exchange rate fluctuations.

#### **Interest Rate Risk**

*Cash, Cash Equivalents restricted cash and Investments*—We are exposed to the risk of interest rate fluctuations on the interest income earned on our cash, cash equivalents, restricted cash and investments. A hypothetical one-percentage point increase or decrease in interest rates applicable to our cash, cash equivalents, restricted cash and investments outstanding at March 31, 2024 would increase or decrease interest income by approximately \$0.7 million on an annual basis.

*Long-term Debt*—Our interest rate risk relates primarily to the United States dollar SOFR-indexed borrowings. Based on our outstanding borrowings pursuant to the Amended and Restated Credit Agreement, interest is incurred at a floating per annum rate in an amount equal to the sum of (i) 6.95% (or 5.95% if the replacement rate is in effect) plus (ii) the greater of (x) the forward-looking term rate based on SOFR for a three month tenor (or the replacement rate, if applicable), and (y) 2.00% per annum. The remaining balance of unamortized debt issuance costs have been reflected as a direct reduction to the loan balance. Interest on the 2025 Convertible Notes is assessed at a fixed rate of 5.0% annually and interest on the 2028 Convertible Notes is assessed at a fixed rate of 8.0% annually and therefore do not subject us to interest rate risk.

#### **Foreign Exchange Risk**

We contract with research organizations outside the United States at times. We may be subject to fluctuations in foreign currency exchange rates in connection with certain of these agreements. Transactions denominated in currencies other than the functional currency are recorded based on exchange rates at the time such transactions arise. Net foreign currency gains and losses did not have a material effect on our results of operations for the year ended March 31, 2024.

### ITEM 4. CONTROLS AND PROCEDURES

#### **Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our chief executive officer (principal executive officer) and chief financial officer (principal financial officer), evaluated the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended ("Exchange Act"). Based on such evaluation, our chief executive officer and chief financial officer have concluded that the disclosure controls and procedures were effective as of March 31, 2024 to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time period specified in the United States Securities and Exchange Commission's ("SEC") rules and forms, and to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its chief executive and chief financial officers, as appropriate, to allow timely decisions regarding required disclosure.

#### **Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended March 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

We are not currently subject to any material legal proceedings. From time to time, we may be subject to various legal proceedings and claims that arise in the ordinary course of our business activities. Although the results of litigation and claims cannot be predicted with certainty, as of the date of this report, we do not believe we are party to any claim or litigation the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our business. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

**ITEM 1A. RISK FACTORS**

In addition to the information set forth in this report, you should carefully consider the risks discussed under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2023, which could have a material adverse effect on our business or consolidated financial statements, results of operations, and cash flows. Additional risks not currently known, or risks that are currently believed to be not material, may also impair business operations. There have been no material changes to our risk factors since the filing of our Annual Report on Form 10-K for the year ended December 31, 2023.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

**(a) Recent Sales of Unregistered Securities**

None.

**(b) Use of Proceeds from Initial Public Offering**

Not applicable.

**(c) Issuer Purchases of Equity Securities**

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

*Rule 10b5-1 Trading Plan*

During the three months ended March 31, 2024, none of the Company’s directors or officers adopted, materially modified, or terminated any contract, instruction, or written plan for the purchase or sale of Company securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any non-Rule 10b5-1 trading arrangement.

**ITEM 6. EXHIBITS**

The exhibits filed as part of this Quarterly Report on Form 10-Q are set forth on the Index to Exhibits, which is incorporated herein by reference.

## XERIS BIOPHARMA HOLDINGS, INC.

## FORM 10-Q

## INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K12B (File No. 001-40880) filed with the Securities and Exchange Commission on October 5, 2021)</a>
3.2	<a href="#">Amended and Restated By-laws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K12B (File No. 001-40880) filed with the Securities and Exchange Commission on October 5, 2021)</a>
10.1*	<a href="#">Amended and Restated Credit Agreement and Guaranty dated as of March 5, 2024, by and among the Registrant, Xeris Pharmaceuticals, Inc., Strongbridge Biopharma Limited, Strongbridge Dublin Limited, Cortendo AB, the lenders from time to time parties thereto and Hayfin Services LLP, as administrative agent</a>
10.2	<a href="#">Amendment to Xeris Pharmaceuticals, Inc. Inducement Equity Plan, dated February 28, 2024 (incorporated by reference to Exhibit 4.3 to Xeris Pharmaceuticals, Inc.'s Registration Statement on Form S-8 (File No. 333-277701) filed with the Securities and Exchange Commission on March 6, 2024)</a>
10.3	<a href="#">Strongbridge Biopharma plc 2017 Inducement Plan (Incorporated by reference to Exhibit 10.15 to Strongbridge Biopharma plc's Form 10-K filed with the SEC on February 27, 2019 (File No. 001-37569))</a>
10.4*	<a href="#">Amendment to Strongbridge Biopharma plc 2017 Inducement Plan, dated February 28, 2024</a>
31.1*	<a href="#">Certification of Principal Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended</a>
31.2*	<a href="#">Certification of Principal Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended</a>
32.1*+	<a href="#">Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS*	XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Filed herewith.

+ The certifications furnished in Exhibit 32.1 hereto are deemed to accompany this report and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. Such certifications will not be deemed to be incorporated by reference into any filings under the Securities Act of 1933, as amended, or the Securities Act of 1934, as amended, except to the extent that the Registrant specifically incorporates it by reference.



**SIGNATURES**

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

Date:	May 9, 2024	<b>Xeris Biopharma Holdings, Inc.</b>
		By <u>/s/ Paul R. Edick</u>
		Paul R. Edick
		Chief Executive Officer and Chairman
		(Principal Executive Officer)
Date:	May 9, 2024	By <u>/s/ Steven M. Pieper</u>
		Steven M. Pieper
		Chief Financial Officer
		(Principal Financial Officer and Principal Accounting Officer)

**AMENDED AND RESTATED CREDIT AGREEMENT AND GUARANTY**

**dated as of**

**March 5, 2024**

**by and among**

**XERIS PHARMACEUTICALS, INC.,  
as the Borrower,**

**XERIS BIOPHARMA HOLDINGS, INC.,  
as Parent,**

**THE SUBSIDIARY GUARANTORS FROM TIME TO TIME PARTY HERETO,**

**as the Subsidiary Guarantors,**

**THE LENDERS FROM TIME TO TIME PARTIES HERETO,**

**as the Lenders,**

**and**

**HAYFIN SERVICES LLP  
as the Administrative Agent**

**U.S. \$315,200,000**

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## AMENDED AND RESTATED CREDIT AGREEMENT AND GUARANTY

AMENDED AND RESTATED CREDIT AGREEMENT AND GUARANTY, dated as of March 5, 2024 (this “*Agreement*”), by and among Xeris Pharmaceuticals, Inc., a Delaware corporation (the “*Borrower*”), Xeris Biopharma Holdings, Inc., a Delaware corporation (“*Parent*”), certain Subsidiaries of Parent that may be required to provide Guaranties from time to time hereunder, each lender from time to time party hereto (each, a “*Lender*” and collectively, the “*Lenders*”), and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, the “*Agent*”).

### WITNESSETH:

WHEREAS, pursuant to the Credit Agreement and Guaranty, dated as of March 8, 2022, by and among the Borrower, the Parent, the lenders from time to time party thereto and the Agent (as amended or otherwise modified prior to the Restatement Date, the “*Existing Credit Agreement*”), the Lenders have provided a senior secured term loan facility to the Borrower in an aggregate principal amount of \$150,000,000, with \$100,000,000 in aggregate principal amount of term loans to be available on the Original Closing Date and up to \$50,000,000 in aggregate principal amount of term loans to be available after the Original Closing Date but prior to March 8, 2023, of which, as of the Restatement Date, the Borrower has borrowed \$150,000,000 in aggregate principal amount of term loans;

WHEREAS, the Borrower has requested that the Lenders (i) agree to amend and restate the Existing Credit Agreement in its entirety, and continue to extend certain credit facilities, in each case, on the terms and conditions of this Agreement, which credit facilities shall consist of: (i) \$200,000,000 in aggregate principal amount of Loans made available (including pursuant to the Restatement Date Conversion) on the Restatement Date (the “*Tranche 1 Loans*”), (ii) \$15,200,000 in aggregate principal amount of Loans to be made available after the Restatement Date but prior to July 15, 2025 (the “*Tranche 2 Loan*”) and (iii) up to an additional \$100,000,000 in aggregate principal amount of Loans to be available after the Restatement Date (“*Tranche 3 Loans*”), in each case, subject to the terms and conditions set forth herein, including the applicable terms and conditions set forth in **Section 6** hereof, and with respect to Tranche 3 Loans, at the sole discretion of the Lenders; and

WHEREAS, the Parent, the Borrower, the Agent and the Lenders party thereto have agreed, among other things and subject to the terms and conditions set forth herein and, as applicable, in the Existing Credit Agreement, to amend and restate the Existing Credit Agreement in its entirety as set forth herein;

NOW, THEREFORE, the parties hereto agree as follows:

### SECTION 1 DEFINITIONS

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

“**Acquisition**” means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of an amalgamation, consolidation, merger, purchase of Equity Interests or other assets, tender offer, or similar transaction having the same effect as any of the foregoing, (i) acquires all or substantially all of the assets of any other Person, (ii) acquires all or substantially all of a business line or unit or division of any other Person, (iii) with respect to any other Person that is managed or governed by a Board, acquires control of Equity Interests of such other Person representing more than fifty percent (50%) of the ordinary voting power for the control of such Board, determined on a fully-diluted, as-if-converted or exercised basis, or (iv) acquires control of more than fifty percent (50%) of the Equity Interests in any other Person engaged in any business that is not managed by a Board, determined on a fully-diluted, as-if-converted or exercised basis.

“**Adverse Regulatory Event**” means, with respect to (i) any Product of Parent or any of its Subsidiaries or (ii) any Product Commercialization and Development Activities of Parent or any of its Subsidiaries with respect to any such Product, the occurrence of any of the following events or circumstances:

(a) the failure of Parent or any of its Subsidiaries to hold, directly or through licensees or agents, in full force and effect, all Regulatory Approvals necessary or required for Parent or any such Subsidiary to conduct its respective operations and businesses;

(b) if required by any applicable Law, the failure of Parent or any of its Subsidiaries to make or file with the FDA or any other applicable Regulatory Authority, in compliance with such applicable Law, any required notice, registration, listing, supplemental application or notification or report;

(c) in connection with any clinical, preclinical, safety or other studies or tests being conducted by (or on behalf of) Parent or any of its Subsidiaries for purposes of obtaining regulatory clearance of, or any Regulatory Approval for, any Product or any Product Commercialization and Development Activities (i) the failure of any clinical, pre-clinical, safety or other required trial, study or test to be conducted in material compliance with any applicable Law or Regulatory Approval; (ii) the failure of any related clinical trial site to be monitored in material compliance with all applicable Laws and Regulatory Approvals; or (iii) the receipt by Parent or any of its Subsidiaries of written notice from the FDA or any other Regulatory Authority requiring the termination or suspension of any such clinical, preclinical, safety or other study or test;

(d) Parent or any of its Subsidiaries or, to the knowledge of Parent, any agent, supplier, licensor or licensee of Parent or any of its Subsidiaries, receives any written notice with respect to any Product or any Product Commercialization and Development Activities from any Regulatory Authority asserting (i) that such Person lacks a required Regulatory Approval with respect to such Product or Product Commercialization and Development Activity, (ii) a of compliance by such Person with any applicable Laws or Regulatory Approvals (or any similar order, injunction or decree) or (iii) that such Regulatory Authority has commenced any regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) with respect to any Product or any Product Commercialization and Development Activities; or

(e) with respect to any Product or Product Commercialization and Development Activity of Parent or any Subsidiary, (i) any Regulatory Authority commences any criminal, injunctive, seizure, detention or civil penalty action or (ii) Parent or any Subsidiary enters into any consent decree, plea agreement or other settlement with any Regulatory Authority with respect to any of the foregoing.

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

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

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

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

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

**“Applicable Margin”** means (i) six and ninety-five hundredths percent (6.95%) per annum generally, or (ii) with respect to Obligations for which the Reference Rate is the Wall Street Journal Prime Rate, five and ninety-five hundredths percent (5.95%) per annum, in each case as such percentage may be increased pursuant to **Section 3.02(b)**.

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

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

**“Authority Certificate”** has the meaning set forth in **Section 6.01(a)(ii)**.

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

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

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

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

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

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

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

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

“**Borrowing**” means, as applicable, (i) the borrowing of the Tranche 1 Loans, which shall be deemed to have occurred on the Restatement Date, (ii) the borrowing of the Tranche 2 Loan on the Tranche 2 Borrowing Date, or (iii) the borrowing of any Tranche 3 Loan on any Tranche 3 Borrowing Date.

“**Borrowing Date**” means, as applicable, (i) with respect to the Tranche 1 Loans, the Restatement Date, (iii) with respect to the Tranche 2 Loan, the Tranche 2 Borrowing Date, or (iii) with respect to any Tranche 3 Loan, the applicable Tranche 3 Borrowing Date.

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

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

“**Capital Lease Obligation**” means, as to any Person, any obligation of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, which obligation is required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of any such obligation shall be the capitalized amount thereof, determined in accordance with GAAP.

“**Casualty Event**” means the damage, destruction, condemnation, confiscation, requisition, seizure or forfeiture, as the case may be, of any property of any Person.

“**Change of Control**” means an event or series of events (including any Acquisition) that causes or results in any of the following:

(i) any Person or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “*option right*”), directly or indirectly, of thirty percent (30%) or more of the Equity Interests of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(ii) during any period of twelve (12) consecutive months, a majority of the members of the Board of Parent cease to be composed of individuals (a) who were members of such Board on the first day of such period, (b) whose election or nomination to such Board was approved by individuals referred to in **clause (a)** above constituting at the time of such election or nomination at least a majority of such Board or (c) whose election or nomination to such Board was approved by individuals referred to in **clauses (a) and (b)** above constituting at the time of such election or nomination at least a majority of such Board;

(iii) Parent shall cease to own (a) directly, beneficially and of record or legally, one hundred percent (100%) of the issued and outstanding Equity Interests of the Borrower and (b) directly or indirectly, beneficially and of record or legally, one hundred percent (100%) of the issued and outstanding Equity Interests of each of its other Subsidiaries (other than minority holdings in Subsidiaries that are not U.S. Persons solely in accordance with applicable Law), free and clear of all Liens (other than Permitted Liens),

(iv) the sale of all or substantially all of the property or business of Parent and its Subsidiaries, taken as a whole; or

(v) the occurrence of an event of default or “Fundamental Change” or equivalent (in each case under the Existing Convertible Notes or any Permitted Convertible Indebtedness).

“*Claim*” means any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgment or other similar process, assessment or reassessment, whether made, converted or assessed in connection with a debt, liability, dispute, breach, failure or otherwise.

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

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

“*Commitment*” means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on the applicable Borrowing Date subject to satisfaction of the conditions set forth in, and in accordance with the terms and provisions of, this Agreement,

which commitments are in the amounts set forth opposite such Lender's name on **Schedule 1** hereto, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise; provided that the aggregate Commitments of all Lenders on the Restatement Date equals \$65,200,000.

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

**"Competitor"** means, at any time of determination, any Person that is an operating company directly and primarily engaged in the same or substantially the same line of business as the Borrower as of such time, including without limitation, any Person that is listed as a competitor in the Borrower's filings made with the SEC.

**"Conforming Changes"** means, with respect to either the use or administration of Three-Month Term SOFR, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), with respect to the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayments, the conversion or continuation notices, the applicability and length of lookback periods, the applicability of **Section 5.05** and other technical, administrative or operational matters) that the Agent reasonably decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents) and consistently applied across the majority of the Agent's Term SOFR portfolio.

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

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

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

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

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

“**Cortendo**” means Cortendo AB, a limited liability company incorporated and existing under the laws of Sweden with corporate identity number 556537-6554.

“**Critical Supplier Contract**” means each supplier contract (i) for which alternatives are not readily available or (ii) the replacement of which would result in substantial operational or financial burden that would impair the ordinary course operations of the Obligor.

“**CVR**” means the Contingent Value Rights Agreement, dated as of October 5, 2021, between Parent and Computershare Inc., a Delaware corporation, as in effect on the Original Closing Date.

“**Debtor Relief Laws**” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

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

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

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

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

“**Disqualified Institution**” means (a) any hedge fund or private equity fund that principally invests in distressed debt for the purpose of owning equity in the applicable borrower (but may include any Affiliated fund or Person that does not principally invest in distressed debt), and (b) any Competitor of the Borrower or principal equity investor in any such Competitor of the Borrower.

“**Disqualified Equity Interests**” means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable upon exercise or otherwise), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests of Parent), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests of Parent), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified



Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is one hundred and eighty (180) days after the Scheduled Maturity Date; provided that (A) neither the Existing Convertible Notes nor any Equity Interests that satisfy the qualifications set forth in the definition of “Permitted Convertible Indebtedness” shall constitute Disqualified Equity Interests of the Borrower or Parent for purposes of this Agreement, and (B) Equity Interests issued pursuant to any plan for the benefit of directors, officers, employees or consultants of such Person, or by any such plan to such directors, officers, employees or consultants, shall not constitute Disqualified Equity Interests solely because such Equity Interests may be required to be repurchased by such Person upon the death, disability, retirement or termination of employment or service of such director, officer, employee or consultant.

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

“**Domestic Subsidiary**” means any direct or indirect Subsidiary of an Obligor that is a U.S. Person.

“**Early Prepayment Fee**” means, with respect to any repayment or prepayment (or other payment made prior to the Scheduled Maturity Date) of all or any portion of the outstanding principal amount of the Loans on any Prepayment Date, whether pursuant to **clause (a)** or **(b)** of **Section 3.03** or otherwise (including as a result of acceleration, an Insolvency Proceeding or other Event of Default), an amount equal to (i) for any Prepayment Date that occurs during the Non-Call Period, the applicable Make-Whole Amount, (ii) for any Prepayment Date that occurs after the second anniversary of the Restatement Date but on or prior to the fourth anniversary of the Restatement Date: the product of (x) the amount of any principal so prepaid, *multiplied by* (y) for any Prepayment Date that occurs (A) after the second anniversary of the Restatement Date and on or prior to the third anniversary of the Restatement Date, five percent (5.0%), and (B) after the third anniversary of the Restatement Date and on or prior to the fourth anniversary of the Restatement Date, three percent (3.0%), and (iii) after the fourth anniversary of the Restatement Date, zero percent (0.0%).

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

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

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

“**Eligible Transferee**” means (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any investment fund that invests in loans

or other obligations for borrowed money, (vi) with respect to any Lender, any of its Affiliates, and (vii) any other “accredited investor” (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes.

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

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

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

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

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

“**ERISA Event**” means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section

4212(c) of ERISA; (vii) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which would reasonably be expected to give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such Plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any Lien (or the fulfillment of the conditions for the imposition of any Lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or Title IV of ERISA, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any “welfare plan”, as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor; or (xix) any Foreign Benefit Event.

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

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

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

“**Examiner**” means an examiner or interim examiner appointed pursuant to the Companies Act 2014 of Ireland and “**Examinership**” shall be construed accordingly.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Rate**” means, as of any date of determination, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Bloomberg screen at or about 11:00 a.m. (New York City time) on such date. In the event that such rate does not appear on the Bloomberg screen, the “**Exchange Rate**” shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably designated by the Agent.

“**Excluded Account**” means, collectively, (i) accounts used exclusively for payroll, the withheld employee portion of payroll taxes and other employee wage and benefit payments, (ii) accounts used exclusively for escrow, trust, or other fiduciary arrangements established in the ordinary course and not in contemplation of this Agreement, (iii) accounts constituting cash collateral accounts subject to Permitted Liens, (iv) accounts of Xeris Australia maintained in Australia with balances not exceeding \$500,000 in the aggregate at any time outstanding and (v) de minimis accounts (other than accounts maintained by or on behalf of Xeris Australia) with balances not exceeding \$1,000,000 individually at any time or \$5,000,000 in the aggregate at any time.

“**Excluded Assets**” has the meaning set forth in the Security Agreement.

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

“**Exculpated Party**” has the meaning set forth in **Section 14.03(b)(ii)**. “**Existing 2025 Convertible Notes**” means the unsecured 5.00% Convertible Senior Notes due 2025, issued by the Borrower pursuant to the Indenture, dated as of June 30, 2020, between the Borrower and U.S. Bank National Association, as trustee, the First Supplemental Indenture, dated June 30, 2020 between the Borrower and U.S. Bank National Association, as trustee, and the Second Supplemental Indenture, dated October 5, 2021, by and among the Borrower, Parent and U.S. Bank National Association, as trustee, as amended, supplemented or otherwise modified from time to time in accordance with this Agreement.

“**Existing 2028 Convertible Notes**” means the unsecured 8.00% Convertible Senior Notes due 2028, issued by the Parent pursuant to the Indenture, dated as of September 29, 2023, between the Parent and U.S. Bank National Association, as trustee, as amended, supplemented or otherwise modified from time to time in accordance with this Agreement.

“**Existing Convertible Notes**” means, collectively, the Existing 2025 Convertibles Notes and Existing 2028 Convertible Notes.

“**Existing Credit Agreement**” has the meaning set forth in the first recital hereto.

“**Existing Delayed Draw Loans**” has the meaning set forth in **Section 2.01(a)(i)**.

“**Existing Initial Loans**” has the meaning set forth in **Section 2.01(a)(i)**.

“**Existing Term Loans**” has the meaning set forth in **Section 2.01(a)(i)**.

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

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

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

“**Federal Funds Effective Rate**” means, for any day, the greater of (i) the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York sets forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate and (ii) zero percent (0%).

“**Fee Letter**” means the Amended and Restated Fee Letter, dated as of the Restatement Date, among Parent, the Borrower and the Agent, as amended or otherwise modified from time to time.

“**Foreign Benefit Event**” means, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable Law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable Law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging

the insolvency of any such Foreign Pension Plan, (d) the incurrence of any liability in excess of \$500,000 by Parent or any of its Subsidiaries under applicable Law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable Law and that would reasonably be expected to result in the incurrence of any liability by Parent or any of its Subsidiaries, or the imposition on Parent or any of its Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable Law, in each case in excess of \$500,000.

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

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

**“Foreign Security Documents”** means (i) the Swedish Pledge Agreement, (ii) each Irish Debenture, and (iii) each Irish Share Charge.

**“Foreign Subsidiary”** means any direct or indirect Subsidiary of any Obligor that is not a Domestic Subsidiary of such Obligor.

**“GAAP”** means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. All references to “GAAP” used herein shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(f)(i)**.

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

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

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

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

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

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

“**Healthcare Laws**” means, collectively, all applicable Laws, Regulatory Approvals or binding Contracts with any Regulatory Authority applicable to any Product, the ownership or use of any Product or the regulation of any Product Commercialization and Development Activities conducted by or on behalf of Parent or any of its Subsidiaries, whether U.S. or non-U.S., federal, state, local or equivalent, relating to the provision of medical or other professional healthcare services or supplies, billing and collection practices relating to the payment for healthcare services or supplies, insurance law (including law related to payment for “no-fault” claims) and workers compensation law as they relate to the provision of, and billing and payment for, healthcare services, patient healthcare, patient healthcare information, patient abuse, the quality and adequacy of medical care, rate-setting, equipment, personnel, operating policies, fee splitting, including, without limitation, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)) (the “**Federal Anti-Kickback Statute**”), the Physician Self-Referral Statute (42 U.S.C. § 1395nn) (the “**Stark Law**”), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286, 287, 1035, 1347 and 1349, and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d et seq.), the exclusion law (42 U.S.C. § 1320a-7), the civil monetary penalties law (42 U.S.C. § 1320a-7a), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.), the FD&C Act, the statutes,

regulations and binding directives of applicable federal healthcare programs, including but not limited to Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act), any binding collection and reporting requirements relating to applicable federal health care programs, the statutes, regulations, and binding directives relating to the processing of any applicable rebate, chargeback or adjustment, under applicable rules and regulations pursuant to the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8), any state supplemental rebate program, Medicare average sales price reporting (42 U.S.C. § 1395w-3a), the Public Health Service Act (42 U.S.C. § 256b), the VA Federal Supply Schedule (38 U.S.C. § 8126) or under any state pharmaceutical assistance program or U.S. Department of Veterans Affairs agreement, and any successor government programs, and any rules and regulations promulgated pursuant to the statutes listed herein.

**“Healthcare Permit”** means, with respect to any Person and its ordinary course business activities, any Regulatory Approval (i) issued or required under any Healthcare Laws applicable to such activities of such Person, including activities related to the provision of billing or invoicing for the sale of goods or services regulated or administered under any Healthcare Laws, or (ii) issued to such Person or required to be held by such Person under any Healthcare Laws.

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

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

**“Immaterial Subsidiary”** means, as of any date of determination, any Foreign Subsidiary of an Obligor (i) the unconsolidated assets of which does not exceed two and a half percent (2.5%) of the consolidated assets of Parent and its consolidated Subsidiaries as set forth in the financial statements most recently delivered pursuant to **Sections 6.01, 8.01(b) or 8.01(c)**, as applicable, and (ii) the unconsolidated revenues of which does not exceed two and a half percent (2.5%) of the consolidated revenues of Parent and its consolidated Subsidiaries as set forth in the financial statements most recently delivered pursuant to **Sections 6.01, 8.01(b) or 8.01(c)**, as applicable; provided that no Subsidiary of the Obligors shall qualify as an Immaterial Subsidiary if the assets or revenue of such Subsidiary taken together with the assets or revenue of all then existing Immaterial Subsidiaries exceeds five percent (5.0%) of the consolidated assets or revenue, as applicable, of Parent and its consolidated Subsidiaries. The parties hereto agree that, as of the Restatement Date, Xeris Australia qualifies as an Immaterial Subsidiary of Parent.

**“Indebtedness”** of any Person means, without duplication:

- (i) all obligations of such Person for borrowed money;



(ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments (including, without limitation, Permitted Convertible Indebtedness);

(iii) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person;

(iv) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable (a) not overdue by more than one hundred twenty (120) days or (b) disputed in good faith pursuant and for which appropriate reserves are being maintained);

(v) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed;

(vi) all Guaranties by such Person of Indebtedness of others;

(vii) all Capital Lease Obligations of such Person;

(viii) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty;

(ix) net obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions;

(x) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances;

(xi) all obligations of such Person in respect of Disqualified Equity Interests; and

(xii) all other obligations required to be classified as indebtedness of such Person under GAAP.

The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

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

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

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

**“Insolvency Proceeding”** means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, Examinership, winding-up or relief of debtors (other than Permitted Fundamental Changes), or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person’s creditors generally or any substantial portion of such Person’s creditors, in each case, undertaken under any Debtor Relief Law.

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

- (i) applications, registrations, amendments and extensions relating to such Intellectual Property;
- (ii) rights and privileges arising under any applicable Laws with respect to such Intellectual Property;
- (iii) rights to sue for or collect any damages for any past, present or future infringements of such Intellectual Property; and
- (iv) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

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

**“Interest Period”** means, with respect to any Borrowing, (i) initially, the period commencing on (and including) the Borrowing Date on which such Borrowing occurred and ending on (and including) the last day of the calendar quarter in which such Borrowing was made, and (ii) thereafter, the period beginning on (and including) the first day of each succeeding calendar quarter and ending on the earlier of (and including) (x) the last day of such calendar quarter and (y) the Maturity Date.

**“Interest Rate”** means, for any Interest Period, the sum of (i) the Applicable Margin plus (ii) the greater of (x) the Reference Rate and (y) two percent (2.0%) per annum.

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

**“Investment”** means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or entry into any agreement to

make any such acquisition (other than if (x) closing thereunder is contingent upon consent of the Agent or the Majority Lenders or payoff of the Obligations or (y) such agreement is generally cancelable without penalty) (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the making of any deposit with, or advance, loan, assumption of debt, or other extension of credit to, or capital contribution in any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of services, inventory or supplies by such Person in the ordinary course of business; (iii) the entering into of any Guaranty of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (iv) the entering into of any Hedging Agreement. The amount of an Investment will be determined at the time the Investment is made without giving effect to any subsequent changes in value.

**“Irish Debenture”** means each Irish law debenture, dated as of the Original Closing Date, provided by each Irish Obligor in favor of the Agent granting first fixed and floating security over the assets of each Irish Obligor.

**“Irish Obligor”** means each Obligor incorporated in Ireland, including each of (i) Strongbridge Biopharma Limited, a company incorporated under the laws of Ireland with registered number 562659 whose registered office is at Fitzwilliam Hall, Suite 206, Fitzwilliam Place, Dublin 2, Ireland and (ii) Strongbridge Dublin Limited a company incorporated under the laws of Ireland with registered number 637591 whose registered office is at 25-28 North Wall Quay, Dublin, Ireland.

**“Irish Share Charge”** means each Irish law share charge, dated as of the Original Closing Date, provided in favor of the Agent by (i) Parent in respect of the shares held by Parent in Strongbridge Biopharma Limited and (ii) Cortendo in respect of the shares held by Cortendo in Strongbridge Dublin Limited.

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

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

**“Legal Reservations”** means (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganization and other laws generally affecting the rights of creditors, (b) the time barring of claims under any applicable statutory limitation and defenses of set-off or

counterclaim, (c) the principle that security expressed to be fixed security may take effect a floating security and (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any non-U.S. legal opinions delivered pursuant to the Loan Documents.

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

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

“**Loan**” means any of the Tranche 1 Loans, the Tranche 2 Loan and the Tranche 3 Loans, and “**Loans**” means, collectively, any combination of the foregoing, as the case may be.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Security Documents, the Fee Letter, any Guaranty Assumption Agreement, any Information Certificate, the Intercompany Subordination Agreement, and any other guaranty, security agreement, subordination agreement, intercreditor agreement or other present or future document, instrument, agreement, certificate identified as a “**Loan Document**” or otherwise expressly required to be delivered pursuant to a Loan Document or other amendment, waiver or modification of the foregoing, delivered to the Agent or any Lender by or on behalf of (and at the direction or request of) an Obligor in connection with this Agreement (including, without limitation, in connection with **Section 8.12**) or any of the other Loan Documents, in each case, as amended or otherwise modified from time to time, but excluding, for the avoidance of doubt, the Warrant Certificates (as defined in the Existing Credit Agreement) and any equity-related document, instrument, agreement, certificate pertaining thereto or entered into or delivered in connection therewith.

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

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

“**Make-Whole Amount**” means, as of any date of repayment or prepayment (or the date on which such repayment or prepayment was required to be made hereunder) of all or any portion of the outstanding principal amount of the Loans at any time during the Non-Call Period (for purposes of this defined term any such date being an “**applicable date**”), an amount, determined (without duplication) by the Agent, equal to the greater of (i) 5.00% of the outstanding principal amount of the Loans being so repaid or prepaid on any such applicable date

and (ii) the present value as of such applicable date of the sum of (x) 5.00% of the principal amount of the Loans to be so repaid or prepaid on such applicable date as if such amount would otherwise be repaid or prepaid on the last day of the Non-Call Period, plus (y) the amount of all interest that would otherwise have accrued hereunder on the principal amount of the Loans being so repaid or prepaid for the period from such applicable date to the expiration of the Non-Call Period, assuming an interest rate for such period equal to the Interest Rate in effect as of such applicable date for the Loans, computed using a discount rate equal to the Treasury Rate as of such applicable date plus 50 basis points.

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

“**Material Adverse Change**” and “**Material Adverse Effect**” mean any event, occurrence, fact, development or circumstance that has had a material adverse change in or effect on (i) the business condition (financial or otherwise), operations, performance or property of Parent and its Subsidiaries taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, as and when due, or (iii) (subject in each case of the Irish Obligors to the Legal Reservations and Perfection Requirements) the legality, validity, binding effect or enforceability against any Obligor of any material portion of the Loan Documents to which it is a party, or the rights and remedies available to or conferred upon the Agent or the Lenders under any Loan Document other than, in the case of this **clause (iii)**, solely as a result of any action on the part of the Agent and/or any Lender that is within such Person’s control and does not arise as a result of a breach of any Loan Document by an Obligor.

“**Material Agreement**” means any Contract to which any Obligor is a party to that is (i) a supplier contract, distributor contract, quality contract, or other agreement pertaining to the commercialization of Products and (ii) filed or required to be filed as an exhibit to any of such Obligor’s reports filed with the Securities Exchange Commission pursuant to the Exchange Act or the rules and regulations promulgated thereunder.

“**Material Indebtedness**” means (i) any Permitted Convertible Indebtedness and (ii) at any time, any other Indebtedness of Parent or any of its Subsidiaries, the outstanding principal amount of which, individually or in the aggregate, exceeds the Threshold Amount (or the Equivalent Amount in other currencies).

“**Material Intellectual Property**” means, all Obligor Intellectual Property owned or licensed (i) necessary for the operation of the business of Parent and its Subsidiaries as currently conducted or as currently anticipated to be conducted, including all current and contemplated Product Commercialization and Development Activities relating to the Products, (ii) the loss of which would reasonably be expected to result in a Material Adverse Effect, (iii) with respect to Intellectual Property that any Obligor acquires from a person that is not an Affiliate, that has a fair market value in excess of \$15,000,000, or (iv) necessary for the Product Commercialization and Development Activities of Parent and its Subsidiaries as currently conducted or currently anticipated to be conducted in respect of the Products known as Gvoke, Keveyis, and Recorlev.

“**Material IP Collateral**” means, in each case to the extent constituting both Material Intellectual Property and Collateral, any (i) copyrights, copyright registrations and applications

for copyright registrations, (ii) trademarks, service marks, trademark and service mark registrations, and applications for trademark and service mark registrations, and/or (iii) patents and patent applications.

“**Material Regulatory Event**” means an Adverse Regulatory Event that, individually or when taken together with each other Adverse Regulatory Event that has occurred since the Restatement Date, has resulted in or would reasonably be expected to result in a Material Adverse Effect.

“**Maturity Date**” means March 5, 2029 (the “**Scheduled Maturity Date**”); provided that:

(A) if the below conditions are not satisfied in full on January 15, 2025, then the Maturity Date shall be January 15, 2025:

(i) no Existing 2025 Convertible Notes are outstanding; or

(ii) to the extent any such Existing 2025 Convertible Notes remain outstanding either:

(x) the maturity date therefor has been extended to a date not earlier than September 5, 2029; or

(y) if the maturity date for any such Existing 2025 Convertible Notes has not been so extended as contemplated by the foregoing **clause (x)** (any such notes that remain outstanding on January 15, 2025 of the type described in this **clause (y)** being herein referred to as “**Relevant Existing 2025 Convertible Notes**”), the Borrower has caused Subject Cash to have been deposited into a Controlled Account, pursuant to terms reasonably satisfactory to the Agent, in an amount sufficient to redeem in full in cash all Relevant Existing 2025 Convertible Notes as of their respective maturity dates as in effect on January 15, 2025;

(B) if the below conditions are not satisfied in full on January 15, 2028, then the Maturity Date shall be January 15, 2028:

(i) no Existing 2028 Convertible Notes are outstanding; or

(ii) to the extent any such Existing 2028 Convertible Notes remain outstanding either:

(x) the maturity date therefor has been extended to a date not earlier than September 5, 2029; or

(y) if the maturity date for any such Existing 2028 Convertible Notes has not been so extended as contemplated by the foregoing **clause (x)** (any such notes that remain outstanding on January 15, 2028 of the type described in this **clause (y)** being herein referred to as “**Relevant Existing 2028 Convertible Notes**”), the Borrower has caused Subject Cash to have been deposited into a Controlled Account, pursuant to terms reasonably satisfactory to the Agent, in an

amount sufficient to redeem in full in cash all Relevant Existing 2028 Convertible Notes as of their respective maturity dates as in effect on January 15, 2028; provided that it is understood and agreed that any Subject Cash remaining in a Controlled Account established in accordance with **clause (A)(ii)(y)** above after giving effect to the redemption of the Relevant Existing 2025 Convertible Note in full in accordance with the terms hereof shall be deemed Subject Cash on terms satisfactory to Agent for purposes of this **clause (B)(ii)(y)** so long as it remains in such Controlled Account.

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

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

**“Multiemployer Plan”** means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

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

**“Net Cash Proceeds”**, means, (i) with respect to any Casualty Event experienced or suffered by Parent or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) including, without limitation, in the form of insurance proceeds or condemnation awards in respect of such Casualty Event, from time to time by or on behalf of such Person after deducting therefrom only (a) reasonable costs and expenses related thereto incurred by Parent or such Subsidiary in connection therewith, (b) amounts required to be repaid on account of any Permitted Indebtedness (other than the Obligations) secured by a Permitted Lien that is required to be repaid as a result of such Casualty Event, (c) amounts required to be reserved in accordance with GAAP for indemnities and against liabilities associated with the property damaged, destructed or condemned in such Casualty Event, and (d) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; and (ii) with respect to any Asset Sale by Parent or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (a) reasonable costs and expenses related thereto incurred by Parent or such Subsidiary in connection therewith, (b) amounts required to be repaid on account of any Permitted Indebtedness (other than the Obligations) secured by a Permitted Lien that is required to be repaid as a result of such Asset Sale, and (c) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; provided that, in each case of clauses (i) and (ii), costs and expenses shall only be

deducted to the extent, that the amounts so deducted are (X) actually paid or payable to a Person that is not an Affiliate of Parent or any of its Subsidiaries and (Y) properly attributable to such Casualty Event or Asset Sale, as the case may be.

**“Non-Balance Sheet Cash Proceeds”** means Subject Cash consisting solely of net cash proceeds received by Parent from one or more issuances of Qualified Equity Interests of Parent or Permitted Convertible Indebtedness (other than Existing Convertible Notes), in either case occurring after the Restatement Date and prior to (i) January 15, 2025 in respect of the Relevant Existing 2025 Convertible Notes, in an aggregate amount not to exceed \$15,200,000 and (ii) January 15, 2028 in respect of the Relevant Existing 2028 Convertible Notes, in an aggregate amount not to exceed \$33,574,000, which net cash proceeds have been deposited into a Controlled Account in accordance with the definition of Maturity Date and the use of which shall be subject to **Section 8.19**.

**“Non-Call Period”** means the period from the Restatement Date up to and including the second anniversary of the Restatement Date.

**“Note”** means a promissory note, in substantially the form of **Exhibit A** hereto, executed and delivered by the Borrower to any Lender in accordance with **Section 2.03**.

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

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

**“Obligor Intellectual Property”** means, at any time of determination, Intellectual Property owned by, licensed to or otherwise held by Parent, the Borrower or any Subsidiary Guarantor at such time including, without limitation, the Intellectual Property listed on **Schedule 7.05(c)**.

**“Obligors”** means, collectively, Parent, the Borrower and the Subsidiary Guarantors (including any Subsidiary of Parent that becomes a Subsidiary Guarantor after the Restatement Date pursuant to **Section 8.12**), together with their respective successors and permitted assigns.

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



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

**“Original Closing Date”** means March 8, 2022.

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

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

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

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

**“Patents”** means all patents and patent applications, including (i) the Inventions and improvements described and claimed therein, (ii) patents and patent applications in any form in any worldwide jurisdiction, including but not limited to reissues, oppositions, divisions, continuations, renewals, extensions, expired, abandoned, rulings from any governmental authority regarding including ones arising from any proceeding such as *Inter Partes* review, and continuations in part thereof, and (iii) all income, royalties, damages and payment now, previously or hereafter due and payable with respect thereto, (iv) all damages and payment for past or future infringements thereof, and rights to sue thereof, and (v) all rights whatsoever pertaining to patents and patent applications accruing thereunder or pertaining thereto throughout the world.

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

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

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

**“Perfection Requirements”** means the making or the procuring of the appropriate registrations, filing, endorsements, notarization, stampings and/or notifications of the Security

Documents and/or the Liens created thereunder and any other actions or steps, necessary in any jurisdiction or under any laws or regulations in order to create or perfect any Liens or the Security Documents or to achieve the relevant priority expressed therein.

“Permitted Acquisition” means any Acquisition by an Obligor (other than Cortendo); provided that:

- (a) immediately prior to, and after giving effect to such Acquisition, (i) all representations and warranties contained in this Agreement and the other Loan Documents that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct, (ii) all representations and warranties contained in this Agreement and the other Loan Documents that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects, and (iii) no Event of Default shall have occurred and be continuing or would reasonably be expected to result therefrom;
- (b) all transactions in connection therewith shall be consummated in all material respects in accordance with all applicable Laws;
- (c) in the case of an Acquisition of Equity Interests of any Person, all of such Equity Interests (except for any such securities in the nature of directors’ qualifying shares required pursuant to any applicable Law) shall be owned by Parent or a wholly-owned, direct or indirect Subsidiary of Parent that is an Obligor (other than Cortendo), and, in the event of an Acquisition that results in the creation or acquisition of a new Subsidiary of Parent, Parent shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Parent, each of the actions set forth in **Section 8.12(a)**;
- (d) such Person (in the case of an Acquisition of Equity Interests of such Person) or assets (in the case of an Acquisition of assets or a division of such Person) shall be engaged or used, as the case may be, in businesses or lines of business that would be permitted pursuant to **Section 9.04**;
- (e) on a *pro forma* basis after giving effect to such Acquisition, Parent and its Subsidiaries shall be in compliance with the financial covenants set forth in **Section 10**;
- (f) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof, when taken together with the purchase price paid in cash for all other Acquisitions consummated or effected since the Restatement Date, does not exceed \$10,000,000 in the aggregate (or the Equivalent Amount thereof);
- (g) the fair market value of the consideration paid in such Acquisition, when taken together with the fair market value of consideration paid in connection with all other Permitted Acquisitions consummated or effected since the Restatement Date (inclusive of cash, deferred purchase price payments, whether in respect of earn-out payments, post-closing adjustments, payments on “seller notes” or otherwise, to the extent actually paid or reasonably expected to be paid), does not exceed \$50,000,000 in the aggregate;

(h) to the extent that all or any portion of the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests of Parent;

(i) in the case of any Acquisition that has a purchase price in excess of \$5,000,000, Parent shall have provided the Agent with at least ten (10) Business Days' prior written notice of any such Acquisition, together with (i) a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents reasonably requested by the Agent), (ii) to the extent available, quarterly and annual financial statements of the Person whose Equity Interests or assets are being acquired for the twelve (12) month period ending thirty (30) days immediately prior to such Acquisition, including any audited financial statements that are available, (iii) to the extent available, all due diligence conducted by or on behalf of Parent or its applicable Subsidiary, as applicable, prior to such Acquisition; provided that, Agent shall deliver any customary non-reliance letters with respect to the receipt of such diligence, (iv) information regarding any contingent liabilities or prospective research and development costs associated with the Person, business or assets being acquired, and (v) any other information reasonably requested by the Agent and available to the Obligor;

(j) neither Parent nor any of its Subsidiaries shall, in connection with (and upon giving effect to) any such Acquisition, assume or remain liable with respect to, or be subject to (x) any Indebtedness of the related seller or the business, Person or properties acquired, except to the extent permitted pursuant to **Section 9.01(g)**, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02**, or (z) any other liability (including Tax, ERISA and environmental liabilities, but excluding Indebtedness or Liens) in excess of \$3,000,000 in the aggregate since the Restatement Date; and

(k) on or prior to the proposed date of the Acquisition, the Agent shall have received a certificate of a Responsible Officer of Parent (prepared in reasonable detail), certifying that the Acquisition complies with the requirements of this definition, and which certificate shall include a summary (prepared in reasonable detail), certifying as to any contingent liabilities and prospective research and development costs associated with the Person, business or assets being acquired.

***“Permitted Cash Equivalent Investments”*** means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any state thereof having maturities of not more than one year from the date of acquisition, (ii) commercial paper maturing no more than two hundred and seventy (270) days after the date of its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., (iii) certificates of deposit maturing no more than 180 days after issued or guaranteed by or placed with any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000, provided that the account in which any such certificate of deposit is maintained is subject to a control agreement in favor of the Agent, (iv) money market funds that (A) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (B) are rated AAA and Aaa (or equivalent rating) by at least two credit

rating agencies and (C) have portfolio assets of at least \$5,000,000, and (v) registered money market funds at least ninety-five percent (95.0%) of the assets of which constitute Permitted Cash Equivalent Investments of the kinds described in **clauses (i) through (iv)** above.

**“Permitted Convertible Indebtedness”** means (a) the Existing Convertible Notes and (b) other unsecured Indebtedness of Parent or the Borrower in the form of notes issued by Parent or the Borrower, as the case may be, after the Restatement Date that satisfy each of the following conditions: (i) as of the date of issuance thereof such Indebtedness is subject to terms, conditions, covenants, conversion or exchange rights, redemption rights and offer to repurchase rights, in each case, as are typical and customary for unsecured convertible notes of such type, as determined by Parent in its good faith judgment, (ii) such Indebtedness is convertible or exchangeable into a fixed number of shares of common stock of Parent (or other Qualified Equity Interests of Parent following a merger event or other change of common stock of Parent), and cash in lieu of fractional shares of common stock of Parent (or such other Qualified Equity Interests), (iii) such Indebtedness has a stated final maturity date that is no earlier than September 5, 2029 (the **“Earliest Date”**), (iv) such Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, prior to the Earliest Date, except (x) upon the occurrence of an event of default, “fundamental change” or equivalent, (y) following the election by Parent to redeem such notes to the extent permitted hereunder, or (z) upon conversion of the notes by holders thereof, (v) no Subsidiary of Parent or the Borrower shall have any guarantee obligations in respect of any such Indebtedness, (vi) such Indebtedness does not include representations, undertakings, covenants or defaults (other than covenants for defaults customary for convertible indebtedness but not customary for loans, as determined by Parent in its good faith judgment) that are more restrictive on the Obligors than the provisions of this Agreement, and (vii) such Indebtedness does not provide for the payment of fees or require the payment of cash interest in excess of the Permitted Convertible Indebtedness Percentage; provided that to the extent any Indebtedness that satisfies the conditions set forth in this **clause (b)** has not been incurred to redeem, repurchase, exchange and/or refinance the Existing Convertible Notes, then such Indebtedness shall only be unsecured Indebtedness of Parent and no Subsidiary of Parent shall have any guarantee or similar credit support obligations in respect thereof.

**“Permitted Convertible Indebtedness Percentage”** has the meaning set forth in the Fee Letter.

**“Permitted Fundamental Changes”** means transactions permitted under **Section 9.03** or other transactions as may be expressly permitted or consented to from time to time in accordance with **Section 14.04**.

**“Permitted Indebtedness”** means any Indebtedness permitted under **Section 9.01** or other Indebtedness as may be expressly permitted or consented to from time to time in accordance with **Section 14.04**.

**“Permitted Liens”** means any Liens permitted under **Section 9.02** or otherwise expressly permitted or consented to under this Agreement to the extent amended or otherwise modified after the Restatement Date pursuant **Section 14.04**.

**“Permitted Refinancing”** means, with respect to any Indebtedness not prohibited from being refinanced, extended, renewed or replaced hereunder, any refinancings, extensions, renewals and replacements of such Indebtedness; provided that such refinancing, extension, renewal or replacement (A) shall be incurred by the same obligor as the Indebtedness being so refinanced and (B) shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that are less favorable in any material respect to Parent and its Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing the Indebtedness being refinanced, extended, renewed or replaced, (iii) have an applicable interest rate or equivalent yield that exceeds the interest rate or equivalent yield of the Indebtedness being refinanced, extended, renewed or replaced, (iv) require or result in any Lien that is not a Permitted Lien, or (v) contain any new requirement to give Guaranties that was not an existing requirement of the Indebtedness being refinanced, extended, renewed or replaced; provided further that after giving effect to such refinancing, extension, renewal or replacement, no Event of Default shall have occurred and be continuing (or would reasonably be expected to immediately occur) as a result thereof.

**“Permitted Tax Distributions”** means, with respect to any Obligor or any of its Subsidiaries which is a member of an affiliated group (consisting of only the Obligors and their Subsidiaries) filing consolidated, combined, unitary or similar tax returns of which such Obligor or Subsidiary is not the common parent, an amount with respect to any taxable year no greater than the corresponding Tax liabilities of the common parent of such affiliated group (including, without limitation, federal, state, and local income, franchise, sales, use, or similar Taxes) to the extent attributable to such Obligor or such Subsidiary; provided, that the amount of such distributions made in respect of any taxable period shall not exceed the amount of Taxes that such Obligor or Subsidiary would have been required to pay for such taxable year if such Obligor or Subsidiary would have been required to pay Taxes as a hypothetical stand-alone taxpayer.

**“Permitted Wind-Up”** has the meaning set forth in **Section 9.03(b)**.

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

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

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

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

**“Proceeding”** has the meaning set forth in **Section 14.03(b)(ii)**.

**“Product”** means (i) those products set forth on **Schedule 7.05(b)** and (ii) any other products that are in process of development or developed, distributed, imported, exported, labeled, promoted, licensed, marketed, sold or otherwise commercialized by Parent or any of its Subsidiaries at any time, including by way of an outbound license or similar arrangement to a third party for distribution, marketing, sale or other commercialization.

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

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

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

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

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

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

“**Real Property Security Documents**” means any landlord consents, bailee letters, any mortgage or deed of trust or any other real property security document executed or required hereunder to be executed by any Obligor and granting a security interest in real property owned or leased (as tenant) by any Obligor in favor of the Secured Parties for purposes of securing the Obligations, in each case, as amendment, supplemented or otherwise modified from time to time.

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

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

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

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

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

(c) a public statement or publication of information by the Governmental Authority governing or regulating the then-current administrator of such Reference Rate announcing that such Reference Rate is no longer representative.

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

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

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

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

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

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

“**Regulatory Approval**” means, with respect to any Product or Product Commercialization and Development Activities, any Healthcare Permit or other Governmental Approval, whether U.S. or non-U.S., that is required to be held or maintained by, or for the benefit of, Parent, the Borrower or any of their respective Subsidiaries with respect thereto, including all applicable ANDAs, NDAs, BLAs, INDs, and similar applications, pre-approvals and post-approvals, governmental pricing approvals, reimbursement approvals and approvals of applications for regulatory exclusivity, clearances, licenses, notifications, registrations or authorizations of any Regulatory Authority, in each case necessary for the ownership, use or other commercialization of such Product or for any such Product Commercialization and Development Activities.

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

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

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

“**Relevant Existing 2025 Convertible Notes**” has the meaning set forth in the definition of “Maturity Date”.



“**Relevant Existing 2028 Convertible Notes**” has the meaning set forth in the definition of “Maturity Date”.

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

“**Responsible Officer**” of any Person means each of the president, chief executive officer, chief financial officer and similar officer of such Person.

“**Restatement Date**” means March 5, 2024.

“**Restatement Date Conversion**” has the meaning set forth in **Section 2.01(a)(i)**.

“**Restatement Date Loans**” has the meaning set forth in **Section 2.01(a)(ii)**.

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

“**Restrictive Agreement**” means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of Parent or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its properties or assets (other than (x)(1) customary provisions in Contracts (including without limitation leases and licenses of Intellectual Property) restricting the assignment thereof, and (2) customary restrictions and conditions contained in asset sale agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) solely to the extent that (A) are only in effect pending consummation of the acquisition or sale contemplated pursuant to such agreement and (B) such restrictions or conditions (I) require Parent or any of its Subsidiaries to conduct its business in the ordinary course of business (with respect to such assets or businesses) consistent with historic practices or (II) are only in effect (with respect to such assets or businesses) pending the consummation of such transaction; provided that such restrictions and conditions apply only to the assets or property subject to such transaction (or, if applicable, the conduct of business of Parent or such Subsidiaries with respect to such assets or businesses) and that such sale is permitted or, in the case of the sale of the Borrower or any other Change of Control, such agreement contemplates the repayment in full of the Obligations hereunder, and (y) restrictions or conditions imposed by any Contract governing secured Permitted Indebtedness permitted under **Section 9.01(e)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of Parent or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to Parent or any of its Subsidiaries or such other Obligor or to Guaranty Indebtedness of Parent or any of its Subsidiaries.

“**Revenue**” means, for any relevant fiscal period, the consolidated total net revenues of the Obligors for such fiscal period resulting from Product Commercialization and Development Activities in the ordinary course of business, as recognized on the income statement of Parent and its Subsidiaries for such fiscal period, determined on a consolidated basis in accordance with GAAP.

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

“**Scheduled Maturity Date**” has the meaning set forth in the definition of “Maturity Date”.

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

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

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

“**Security Agreement**” means the Security Agreement, dated as of the Original Closing Date, among the grantors party thereto (including Parent and the Borrower) and the Agent, granting a security interest in such grantor’s personal property in favor of the Agent, as amended or otherwise modified from time to time.

“**Security Documents**” means, collectively, the Security Agreement, each Real Property Security Document, each Short-Form IP Security Agreement, each Foreign Security Document, and each other security agreement, control agreement or financing statement, registration, recordation, filing, instrument or approval required, entered into or recommended to grant, perfect and otherwise render enforceable Liens in favor of the Secured Parties for purposes of securing the Obligations, including (without limitation) pursuant to **Section 8.12**, in each case, as amended or otherwise modified from time to time.

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

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

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

“**Solvent**” means, with respect to (a) any Person (or group of Persons, other than a Person that is a limited liability company incorporated and existing under the laws of Sweden) at any time, that (i) the present fair saleable value of the property of such Person (or group of Persons) is greater than the total amount of liabilities (including contingent liabilities) of such Person (or group of Persons), (ii) the present fair saleable value of the property of such Person (or group of Persons) is not less than the amount that will be required to pay the probable liability of such Person (or group of Persons) on its debts as they become absolute and matured in the ordinary course, and (iii) such Person (or group of Persons) has not incurred and does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s (or such group of Persons’) ability to pay as such debts and liabilities as they mature in the ordinary course, and (b) any Person being a limited liability company incorporated and existing under the laws of Sweden, such Person is not subject to any proceedings with respect to bankruptcy (Sw. *konkurs*), company reconstruction (Sw. *företagsrekonstruktion*) or liquidation (Sw. *likvidation*), other than as permitted under **Section 9.03**.

“**Swedish Pledge Agreement**” means the Swedish law First Priority Pledge Agreement between Strongbridge Biopharma Limited and the Agent relating to all shares Cortendo.

“**Specified Asset Sale**” means any Asset Sale of the type described in any of clauses **(d)** or **(m)** of **Section 9.09**.

“**Subject Cash**” means (i) with respect to the Relevant Existing 2025 Convertible Notes, an amount of cash sufficient to redeem and discharge all Relevant Existing 2025 Convertible Notes in cash and in full on their respective maturity dates as in effect on January 15, 2025 and (ii) with respect to the Relevant Existing 2028 Convertible Notes, an amount of cash sufficient to redeem and discharge all Relevant Existing 2028 Convertible Notes in cash and in full on their respective maturity dates as in effect on January 15, 2028; provided that, except for not more than \$15,600,000 of the total amount of such Subject Cash which may have been balance sheet cash on hand of the Borrower or Parent, the balance of all such Subject Cash shall consist solely of Non-Balance Sheet Cash Proceeds.

“**Subordinated Indebtedness**” means Indebtedness incurred by Parent or any of its Subsidiaries subordinated to the Obligations (pursuant to a subordination, intercreditor, or other similar written agreement in each case in form and substance reasonably satisfactory to Agent entered into among Agent, Parent, and/or any of its Subsidiaries, and the other creditor), on terms reasonably acceptable to Agent.

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

parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Parent.

“***Subsidiary Guarantor***” means, (i) initially as of the Restatement Date, each Subsidiary of Parent identified under the caption “SUBSIDIARY GUARANTORS” on the signature pages hereto and, thereafter, (ii) each Subsidiary of Parent that becomes, or is required to become, a “Subsidiary Guarantor” after the Restatement Date pursuant to **Section 8.12**, in each case of **clauses (i) and (ii)**, other than an Immaterial Subsidiary.

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

“***Technical Information***” means all Product Related Information, including clinical data and any information submitted to a regulatory authority to obtain approvals, all trade secrets, invention disclosures and other proprietary or confidential information, public information, non-proprietary know-how, any information of a scientific, technical, or commercial nature related to any Product Commercialization and Development Activities, any information of business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Invention disclosures, all documented research, developmental, demonstration or engineering work and all other information, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs, information technology and any other information.

“***Three-Month Term SOFR***” means, the Term SOFR Reference Rate for a three month tenor on the day (such day, the “***Periodic Term SOFR Determination Day***”) that is two (2) U.S. Government Securities Business Days prior to the first day of the applicable Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; provided that if Three-Month Term SOFR shall ever be less than the 2.00%, then Three-Month Term SOFR shall be deemed to be 2.00%.

“***Threshold Amount***” means an amount equal to \$3,000,000.

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

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

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

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

“**Tranche 1 Facility Fee**” has the meaning set forth in the Fee Letter.

“**Tranche 1 Loans**” has the meaning set forth in the third recital hereto.

“**Tranche 2 Borrowing Date**” means the date on which the Tranche 2 Loan is made pursuant to the terms and conditions hereof.

“**Tranche 2 Borrowing Date Certificate**” has the meaning set forth in **Section 6.02(a)**.

“**Tranche 2 Facility Fee**” has the meaning set forth in the Fee Letter.

“**Tranche 2 Loan**” has the meaning set forth in the third recital hereto.

“**Tranche 2 Loan Commitment Amount**” means the Commitment of the Lenders, subject to the terms and conditions set forth herein, to make the Tranche 2 Loan in the amount of \$15,200,000.

“**Tranche 3 Borrowing Date**” means the date on which a Tranche 3 Loan is made pursuant to the terms and conditions hereof.

“**Tranche 3 Loans**” has the meaning set forth in the third recital hereto.

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

“**Treasury Rate**” means, for the purpose of calculating any Make-Whole Amount, the yield to maturity implied by the yield(s) for the most recently issued actively traded on-the-run U.S. Treasury securities as quoted on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets as of approximately 5:00 p.m. (New York City time) on the second Business Day immediately preceding the date of any repayment or prepayment that is the subject of such Make-Whole Amount, in respect of that period which is mathematically closest in duration to the actual period over which such determination is to be assessed for the purposes of making a present value calculation. The

Bloomberg quotation of the US Treasury Rate as at the close of business in New York on the day before any determination is made shall be used and shall be final in the absence of manifest or demonstrable error.

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

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

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

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

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

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

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

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

“**White List Agent**” means those Persons disclosed in writing by the Agent to the Borrower prior to the Restatement Date.

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

“**Withholding Agent**” means any of the Borrower, any other Obligor or the Agent.

“**Write-Down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK

Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

“*Xeris Australia*” means Xeris Pharmaceuticals Australia Pty Ltd., a company organized under the laws of Australia.

**1.02 Accounting Terms and Principles.** Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for Parent and its Subsidiaries, in each case without duplication. If Parent or the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in either case, occurring after the Original Closing Date, then the Lenders, Parent and the Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders, Parent and the Borrower after such change or issuance conform as nearly as possible to their respective positions as of the Original Closing Date and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) Parent and the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such change or issuance.. Notwithstanding anything herein to the contrary, for purposes of **Section 9** hereof and any other negative covenant in the Loan Documents (but not, for the avoidance of doubt any financial reporting obligations under the Loan Documents), with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 842 on the definitions and covenants contained herein, GAAP as in effect on December 31, 2018, shall be applied.

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

- (a) the terms defined in this Agreement include the plural as well as the singular and vice versa;
- (b) words importing gender include all genders;
- (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;
- (d) any reference to “this Agreement” refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and

words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;

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

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

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

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

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

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

(k) the word “will” shall have the same meaning as the word “shall”;

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

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

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

If any obligation to pay any amount pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day.

**1.04 Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (i) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (ii) if any new Person comes into existence,



such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

**1.05 Reference Rate Replacement.** For purposes of this Agreement and each other Loan Document, the Obligors jointly and severally acknowledge and agree for the benefit of each Secured Party as follows:

(a) Upon the occurrence of an event of the type described in the first proviso of the definition of “Reference Rate”, the Agent will promptly notify the Borrower thereof and as set forth in such proviso, the Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to Three-Month Term SOFR. However, the Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to Three-Month Term SOFR or any other rate referenced herein or in any other Loan Document or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, whether the composition or characteristics of any such alternative, successor or replacement Reference Rate will be similar to, or produce the same value or economic equivalence of, Three-Month Term SOFR or have the same volume or liquidity as did Three-Month Term SOFR prior to its discontinuance or unavailability).

(b) There is no assurance that the composition or characteristics of any such alternative, successor or replacement Reference Rate will be similar to or produce the same value or economic equivalence as Three-Month Term SOFR or that it will have the same volume or liquidity as did Three-Month Term SOFR prior to its discontinuance or unavailability.

**1.06 Times of Day; Times of Performance.**

(a) Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

(b) If any delivery or other performance obligation hereunder (other than payments) falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day.

**1.07 Schedules.** The Schedules to this Agreement relating to the representations and warranties made under this Agreement or any other Loan Document may be updated by written delivery to the Agent pursuant to **Section 6.02(a)** in connection with a Borrowing of the Tranche 2 Loan or any Tranche 3 Loan or if otherwise required in connection with an amendment or modification of any Loan Document that has been mutually agreed upon by Parent, the Borrower and the Majority Lenders.

## SECTION 2 THE COMMITMENTS AND THE LOANS

**2.01 Loans.**

(a) **Tranche 1 Loans.**

(i) The Borrower acknowledges and agrees that, immediately prior to the effectiveness of this Agreement, (i) the outstanding principal amount of the “Initial Loans” under and as defined in the Existing Credit Agreement was \$100,000,000 (collectively, the “**Existing Initial Loans**”), and (ii) the outstanding principal amount of the “Delayed Draw Loans” under and as defined in the Existing Credit Agreement was \$50,000,000 (collectively, the “**Existing Delayed Draw Loans**” and, together with the Existing Initial Loans, collectively, the “**Existing Term Loans**”). Upon the effectiveness of this Agreement, the entire principal amount of the Existing Term Loans shall be deemed to have been, and hereby is, converted (the “**Restatement Date Conversion**”) into outstanding Tranche 1 Loans hereunder, in like amount, without constituting a novation, and shall constitute the Tranche 1 Loans for all purposes hereunder and under the other Loan Documents.

(ii) On the terms and subject to the conditions of this Agreement, each Lender agrees to make additional Tranche 1 Term Loans (the “**Restatement Date Loans**”) to the Borrower, in a single Borrowing on the Restatement Date, in an aggregate principal amount for all Lenders of \$50,000,000.

(iii) The aggregate outstanding principal amount of each Lender’s Tranche 1 Loans on the Restatement Date immediately after giving effect to the Restatement Date Conversion shall be the amount set forth opposite such Lender’s name on **Schedule 1** (which such schedule indicates, solely for convenience, the portion of each such Lender’s Tranche 1 Loans constituting Restatement Date Loans and Existing Term Loans subject to the Restatement Date Conversion).

(b) **Tranche 2 Loan.** On the terms and subject to the conditions of this Agreement, each Lender agrees to make the Tranche 2 Loan to the Borrower, in a single Borrowing at any time during the period beginning after the Restatement Date and ending on or prior to July 15, 2025, in an aggregate principal amount for all Lenders of \$15,200,000 in immediately available funds.

(c) **Tranche 3 Loans.** The Borrower may request that the Lenders or any of their respective Related Funds make one or more Tranche 3 Loans in an aggregate principal amount of up to \$100,000,000; provided that, notwithstanding any such request or any other term or provision of this Agreement or any other Loan Document, (i) the making of each Tranche 3 Loan shall be subject to the prior consent of the Majority Lenders after receiving such request from the Borrower (which consent may be provided or denied in the sole discretion of the Majority Lenders), and no Lender shall have any commitment to make or participate in the making of a Tranche 3 Loan unless such Lender elects to participate in such Tranche 3 Loan and the Majority Lenders have provided such consent in writing to the Borrower and the Agent; (ii) any consenting Lender may nominate any of its Related Funds to fund all or a portion of its Proportionate Share of such Tranche 3 Loan and (iii) any Lender may decline to participate in the Tranche 3 Loan and such declining Lender’s Proportionate Share may be provided by any consenting Lender or its Related Fund.

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

(e) **Loan Currency.** Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made hereunder will be denominated solely in Dollars, and all Loans and other Obligations will be repayable solely in Dollars and no other currency.

**2.02 Borrowing Procedures.** At least twelve (12), but not more than seventeen (17), Business Days prior to any proposed Borrowing Date (or at least one (1), but not more than five (5) Business Day(s) prior to the Borrowing on the Restatement Date), the Borrower shall deliver to the Agent an irrevocable Borrowing Notice, which notice, if received by the Agent on a day that is not a Business Day or after 12:00 noon (New York City time) on a Business Day, shall be deemed to have been delivered on the next Business Day.

**2.03 Notes.** If requested by any Lender, any Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such Notes in the form attached hereto as **Exhibit A**. In the event that a Note is ever lost, stolen, destroyed, or mutilated, upon the receipt of an affidavit of an officer of any Lender as to such loss, theft, destruction or mutilation, together an indemnity from such Lender in writing reasonably acceptable to Borrower to save it harmless in respect of such replaced Note and fully indemnify Borrower for any and all actual out-of-pocket losses in connection with such replaced Note, the Borrower shall issue, in lieu thereof, a replacement Note in the same principal amount thereof and otherwise of like tenor.

**2.04 Use of Proceeds.** The Borrower shall use the proceeds of the Tranche 1 Loans for purposes of (i) working capital and general corporate purposes, and (ii) without duplication, the payment of fees and expenses associated with this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby. The Borrower shall use the proceeds of the Tranche 2 Loan solely for the redemption of the Existing 2025 Convertible Notes in full no later than three (3) Business Days after the Tranche 2 Borrowing Date.

### **SECTION 3 PAYMENTS OF PRINCIPAL AND INTEREST**

#### **3.01 Repayments Generally; Application.**

(a) There will be no scheduled repayments of principal on the Loans prior to the Maturity Date. On the Maturity Date, the Borrower shall repay the entire remaining outstanding balance of the Loans, and all earned and payable accrued interest and fees, in full and in cash.

(b) The Borrower agrees that all amounts payable hereunder or under any other Loan Document, in respect of any Loans, fees or interest accrued or accruing thereon, or any other Obligations, shall be repaid and prepaid solely in Dollars. Except as otherwise provided in this Agreement, proceeds of each payment (including each repayment and prepayment of Loans) by or on behalf of the Borrower shall be (i) applied pro rata between the Tranche 1 Loans and any outstanding Tranche 2 Loan and Tranche 3 Loans (on the basis of aggregate outstanding principal amount), and (ii) deemed to be made ratably to the Lenders in accordance with their respective Proportionate Shares of the Loans being repaid or prepaid.

#### **3.02 Interest.**

(a) **Interest Generally.** The outstanding principal amount of the Loans, as well as the amount of all other outstanding Obligations, shall accrue interest at the Interest Rate on and from the Restatement Date. The Agent's determination of the Interest Rate shall be binding on the Borrower, its Subsidiaries and the Lenders in the absence of manifest or demonstrable error.

(b) **Default Interest.** Notwithstanding the foregoing, (i) upon the occurrence and during the continuance of any Event of Default described in **clauses (a), (b) and (h) of Section 11.01**, and (ii) upon notice from the Agent upon the occurrence and during the continuance of any other Event of Default, the Applicable Margin shall increase automatically by three percent (3.0%) per annum (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "**Default Rate**"). If any Obligation is not paid when due under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

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

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

### **3.03 Prepayments; Prepayment Fees.**

(a) **Optional Prepayments.**

(i) Subject to prior written notice pursuant to **clause (a)(ii)** below and the payment of the Early Prepayment Fee pursuant to **clause (c)** below, the Borrower shall have the right to optionally prepay, in whole or in part, the outstanding principal amount of the Loans on any Business Day (a "**Prepayment Date**"); provided that in addition to such prepaid principal amount and the Early Prepayment Fee payable pursuant to **clause (c)** below, the Borrower shall also make payment in full in cash on such Prepayment Date of all accrued but unpaid interest on the principal amount of the Loans being prepaid and any amounts owing pursuant to **Section 5.05** (such aggregate amount of principal, the Early Prepayment Fee payable pursuant to **clause (c)** below and accrued interest, the "**Prepayment Price**").

(ii) A notice of optional prepayment shall be effective only if received by the Agent not later than 11:00 a.m. (New York City time) on a date not less than three (3) (nor more than five (5)) Business Days prior to the proposed Prepayment Date. Each notice of optional prepayment shall specify the proposed Prepayment Date, the principal amount of the Loans to be prepaid, the amount of accrued and unpaid interest that will be paid on the Prepayment Date,

and, in reasonable detail, a calculation of the Early Prepayment Fee, payable on such Prepayment Date in connection with such proposed prepayment.

(b) **Mandatory Prepayments.**

(i) Within five (5) Business Days of the receipt by any Obligor of Net Cash Proceeds from the occurrence of any Casualty Event or Specified Asset Sale, in either case in excess of \$2,000,000 in the aggregate during any fiscal year, the Borrower shall cause an amount equal to one hundred percent (100%) of the Net Cash Proceeds received with respect to such Casualty Event or Specified Asset Sale, as the case may be, to be applied and allocated as set forth in **clause (d)** below to (i) the prepayment of the outstanding principal amount of the Loans, (ii) the payment of accrued and unpaid interest on the principal amount of the Loans being prepaid and (iii) the payment of the Early Prepayment Fee payable pursuant to **clause (c)** below.

(ii) Notwithstanding **clause (i)** above, so long as no Default has occurred and is continuing or shall immediately result therefrom, if, within ten (10) Business Days following the occurrence of any such Casualty Event or Specified Asset Sale, a Responsible Officer of Parent delivers to the Agent a notice to the effect that the Borrower intends to apply (or cause to be applied) the Net Cash Proceeds from such Casualty Event or Specified Asset Sale, to (A) repair, refurbish, restore, replace or rebuild the asset subject to such Casualty Event or Specified Asset Sale, (B) the cost of purchase or constructing other assets useful in the business of Parent or another Obligor (other than Cortendo), or (C) other general corporate purposes (excluding Restricted Payments) not otherwise prohibited by the terms of this Agreement, then such Net Cash Proceeds of such Casualty Event or Specified Asset Sale may be applied for such purpose in lieu of such mandatory prepayment otherwise required pursuant to **Section 3.01(b)(i)** to the extent such Net Cash Proceeds of such Casualty Event or Specified Asset Sale are actually applied for such purpose. Notwithstanding the foregoing, in the event that Net Cash Proceeds have not been so applied within three hundred sixty (360) days following the occurrence of such Casualty Event or Specified Asset Sale, the Borrower shall cause an amount equal to one hundred percent (100%) of such unused balance of such Net Cash Proceeds with respect to such Casualty Event or Specified Asset Sale, as the case may be, to be applied and allocated as set forth in **clause (d)** below to the prepayment of the outstanding principal amount of the Loans, together with payment of accrued and unpaid interest on the principal amount of the Loans being so prepaid, the applicable Early Prepayment Fee payable pursuant to **clause (c)** below and any amounts owing pursuant to **Section 5.05**.

(c) **Early Prepayment Fee.** Without limiting the foregoing, whenever any prepayment of Loans is made or required to be made hereunder on or prior to the fourth anniversary of the Restatement Date, pursuant to **Section 3.03(a)** or **Section 3.03(b)(i)** or otherwise, whether voluntary, involuntary, mandatory, as a result of a Default, acceleration or otherwise, the Early Prepayment Fee shall be payable in full in cash on the applicable Prepayment Date for such prepayment. Until payment in full in cash of all Obligations, all Early Prepayment Fees shall continue to be due and payable, including after the occurrence of any Default, acceleration, maturity or otherwise.

(d) **Application.**

(i) With respect to any payment, repayment or prepayment made pursuant to **clause (a)** or **(b)** above, the aggregate amount of such payment, repayment or prepayment shall be applied and allocated to (i) the prepayment of the outstanding principal amount of the Loans, (ii) the payment of accrued and unpaid interest on such principal amount being prepaid and (iii) the payment of any applicable Early Prepayment Fee such that the full amount of the principal amount of the Loans being prepaid, together with any accrued and unpaid interest thereon and the Early Prepayment Fee payable hereunder, shall be paid in full through such application and allocation of such aggregate amount of such payment, repayment or prepayment.

(ii) With respect to any other payment, repayment or prepayment of the outstanding principal amount of the Loans (including, for the avoidance of doubt, upon the maturity or following the acceleration thereof, whether from the proceeds of Collateral or otherwise), proceeds thereof shall be applied in the following order of priority, with proceeds being applied to a succeeding level of priority only if amounts owing pursuant to the immediately preceding level of priority have been paid in full in cash; provided that all such applications to Lenders shall be made in accordance with their respective Proportionate Shares:

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

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

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

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

(E) fifth, to the payment of any Early Prepayment Fee then due and payable;

(F) sixth, to the payment in full of all other Obligations then due and payable to the Agent and the Lenders, ratably among them accordance with their respective Proportionate Shares, to the extent such Obligations are payable to them; and

(G) seventh, to the Borrower or such other Persons as may be required in accordance with Law.

**3.04 Fee Letter.** The Borrower and Parent shall, jointly and severally, pay all fees as and when payable under and in accordance with the Fee Letter.

## SECTION 4 PAYMENTS, ETC.

### 4.01 Payments.

(a) **Payments Generally.** Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Agent designated by the Agent by notice to the Borrower, and (ii) not later than 11:00 a.m. (New York City time) on the date on which such payment is due (each such payment made after such time on such due date shall be deemed to have been made on the next succeeding Business Day).

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

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

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

### 4.03 Set-Off.

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

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

(c) **Payments Set Aside.** To the extent that any payment by or on behalf of any Obligor is made to the Agent or any Lender, or the Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver, Examiner, process adviser or any other party, in connection with any Insolvency Proceeding or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

## SECTION 5 YIELD PROTECTION, ETC.

### 5.01 Additional Costs.

(a) **Changes in Law Generally.** If, on or after the Restatement Date (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the Restatement Date (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or other Recipient or shall impose on a Lender (or its lending office) or other Recipient any other condition affecting the Loans or the Commitment, not as a result of any action or inaction on the part of such Lender, and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender or other Recipient under this Agreement or any other Loan Document, or subject any Lender or other Recipient to any Taxes on its loans, loan principal, commitments or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto (other than (i) Indemnified Taxes, (ii) Taxes described in **clauses (ii)** through **(iv)** of the definition of “*Excluded Taxes*” and (iii) Connection Income Taxes), then the Borrower shall pay to such Lender or other Recipient within five (5) Business Days after any demand for such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements.** If a Lender shall have determined that, on or after the Restatement Date (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), the adoption of any applicable Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by



any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the Restatement Date (or, with respect to any Lender, such later date on which such Lender becomes party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender within five (5) Business Days after any demand for such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

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

(d) **Delays in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this **Section 5.01** shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this **Section 5.01** for any increased costs or reductions incurred or suffered more than nine months prior to the date that such Lender notifies the Borrower of the circumstance giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the circumstances giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

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

(f) **General Policy.** Notwithstanding the foregoing, the Borrower shall only be required to compensate a Lender pursuant to this **Section 5.01** to the extent it is such Person's general policy or practice to demand compensation from debtors similarly situated in similar circumstances under comparable provisions of other financing agreements (it being understood

that this paragraph shall not be deemed to require any such Person to make available any information that it deems in its reasonable discretion confidential).

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

### **5.03 Taxes.**

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

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

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

(d) **Indemnification by the Borrower.** The Borrower and each other Obligor party hereto each hereby jointly and severally agree to indemnify, hold harmless and reimburse each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect

thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest or demonstrable error.

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

(f) **Status of Lenders.**

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

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

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

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

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

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

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

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

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

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

such supplementary documentation as may be prescribed by such applicable Law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

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

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

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

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

**5.04 Mitigation Obligations.** If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to Section 5.01 or Section 5.03, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole, reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

## **SECTION 6 CONDITIONS PRECEDENT**

**6.01 Conditions to Tranche 1 Loans.** The obligation of the Lenders to make the Restatement Date Loan and the effectiveness of the Restatement Date Conversion, in each case, on the Restatement Date shall be subject to the execution and delivery of this Agreement by the parties hereto, the delivery of a Borrowing Notice with respect to the Restatement Date Loan as required pursuant to **Section 2.02**, the delivery of a funds flow memorandum summarizing, in reasonable detail, the use of proceeds of Restatement Date Loan, and the prior or concurrent satisfaction (or waiver thereof by the Agent) of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Secretary's Certificate, Etc.** The Agent shall have received from each Obligor organized in the United States and each Irish Obligor, in each case, party to a Loan Document on the Restatement Date:

(i) a copy of a good standing certificate or the equivalent thereof (to the extent such concepts are recognized in such jurisdictions as are applicable), dated a date reasonably close to the Restatement Date, for each such Person (other than an Irish Obligor) and

(ii) a certificate (each an "**Authority Certificate**"), dated as of the Restatement Date, duly executed and delivered by such Person's secretary or assistant secretary, managing member, director, general partner or equivalent, as to:

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

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

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

(D) in the case of each Irish Obligor:

(1) confirming that it and each other Obligor are members of a group of companies consisting of Parent as holding company, and each other Obligor, as a subsidiary within the meaning of Sections 7 and 8 of the Companies Act 2014 of Ireland and for the purposes of section 243 of the Companies Act 2014 of Ireland;

(2) attaching any power of attorney documentation executed in connection with the Loan Documents; and

(3) confirming the tax number of such Irish Obligor,

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

(b) **Certificate for Cortendo.** The Agent shall have received a certificate, signed by an authorized signatory of Cortendo, attaching:

(i) a copy of the minutes of the board of directors of Cortendo, approving this Agreement and the other Loan Documents to which Cortendo shall be a party, and authorizing a specific person or persons to sign and execute this Agreement and the other Loan Documents to which Cortendo shall be a party on behalf of Cortendo; and

(ii) a copy of the current certificate of registration (Sw. *registreringsbevis*); and articles of association (Sw. *bolagsordning*) of Cortendo.

(c) **Information Certificate.** The Agent shall have received a fully completed Information Certificate, in form and substance reasonably satisfactory to the Agent, dated as of the Restatement Date, duly executed and delivered by a Responsible Officer of Parent and the Borrower, which is true and correct as of the Restatement Date. All documents and agreements required to be appended to the Information Certificate, if any, shall be in form and substance reasonably satisfactory to the Agent and the Lenders, shall have been executed and delivered by the requisite parties and shall be in full force and effect.

(d) **Restatement Date Certificate.** The following statements shall be true and correct, and the Agent shall have received a certificate, dated as of the Restatement Date and in form reasonably satisfactory to the Agent, duly executed and delivered by a Responsible Officer of Parent and the Borrower certifying that: (i) both immediately before and after giving effect to the Borrowing on the Restatement Date, (x) the representations and warranties set forth in each Loan Document that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct as of such earlier date, (y) the representations and warranties set forth in each Loan Document that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date, and (z) no Event of Default has occurred and is continuing, or would reasonably be expected to result

from the Borrowing of the Restatement Date Loan, or the consummation of any Transactions contemplated to occur on the Restatement Date, and (ii) all of the conditions set forth in this **Section 6.01** have been satisfied (or waived in writing by the Agent) except to the extent such condition relates to the satisfaction or approval in form or substance of any documents by the Agent. All documents and agreements required to be appended to the certificate delivered pursuant to this **Section 6.01(d)**, if any, shall be in form and substance reasonably satisfactory to the Agent, shall have been, as applicable, executed and delivered by the requisite parties, and shall, as applicable, be in full force and effect.

- (e) **[Reserved]**.
- (f) **Financial Information, Etc.** The Agent shall have received:
  - (i) audited consolidated financial statements of Parent and its Subsidiaries for the fiscal year ended December 31, 2022; and
  - (ii) unaudited consolidated balance sheets of Parent and its Subsidiaries for each fiscal quarter ended after December 31, 2022, together with the related consolidated statement of operations, shareholder's equity and cash flows for each such fiscal quarter.
- (g) **Minimum Liquidity Compliance.** The Agent shall have received evidence reasonably satisfactory to it that, immediately after giving effect to the Borrowing on the Restatement Date, the Borrower will be in compliance with the covenant set forth in **Section 10.01**.
- (h) **Insurance.** The Agent shall have received certificates of insurance evidencing that the insurance required to be maintained pursuant to **Section 8.05** with respect to the Obligors organized in the United States is in full force and effect, in each case, in form and substance reasonably satisfactory to the Agent.
- (i) **Solvency.** The Agent shall have received a solvency certificate substantially in the form of **Exhibit I**, duly executed and delivered by the chief financial or accounting Responsible Officer of Parent, dated as of the Restatement Date, in form and substance reasonably satisfactory to the Agent.
- (j) **Lien Searches.** The Agent shall have received the results of Lien searches regarding Parent and its Subsidiaries made within thirty (30) days prior to the Borrowing of the Restatement Date Loan, and such searches shall reveal no Liens on any of the assets of such Persons except for Liens permitted by **Section 9.02** or to be discharged on or prior to the Restatement Date pursuant to documentation satisfactory to the Agent.
- (k) **Controlled Accounts.** The Agent shall have received evidence satisfactory to it that all Deposit Accounts, Securities Accounts, Commodities Accounts, lockboxes or other similar accounts of each Obligor (other than Excluded Accounts) are Controlled Accounts.
- (l) **Irish Searches.** The Agent shall have received Companies Registration Office, Judgement Office and Winding Up Petitions searches against the Irish Obligors and all acts and charges appearing thereon to be explained by counsel for the Irish Obligors.



(m) **Fee Letter.** The Agent shall have received the Fee Letter duly executed and delivered by Parent and the Borrower.

(n) **Opinions of Counsel.** The Agent shall have received one or more legal opinions, dated as of the Restatement Date and addressed to the Agent and the Lenders, from independent legal counsel to Parent, the Borrower and their Subsidiaries (or, in the case of Irish counsel, counsel to the Agent) and if necessary, other legal counsel reasonably satisfactory to the Agent, in each case, in form and substance reasonably acceptable to the Agent

(o) **Permitted Indebtedness.** On the Restatement Date, after giving effect to the Transactions, Parent and its Subsidiaries shall not have any Indebtedness other than the Obligations and other Permitted Indebtedness.

(p) **Material Adverse Change.** Since December 31, 2022, no Material Adverse Change shall have occurred.

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

(r) **All Other Loan Documents.** The Agent shall have received all other Loan Documents to be entered into on the Restatement Date in form and substance satisfactory to the Agent, and the Agent shall have received all information, approvals, resolutions, opinions, documents or instruments as the Agent shall have reasonably requested in writing.

(s) **Satisfactory Legal Form.** All documents, including any attachments or appendices thereto, executed, delivered or submitted pursuant hereto by or on behalf (and at the direction) of Parent, the Borrower or any of their respective Subsidiaries in connection with the making of the Restatement Date Loan shall be reasonably satisfactory in form and substance to the Agent, and the Agent shall have received all information, approvals, resolutions, opinions, documents or instruments as the Agent shall have reasonably requested in writing.

(t) **Governmental Approvals and Third Party Consents.** The Agent shall have received evidence that Parent, the Borrower and the applicable Subsidiaries have obtained all Governmental Approvals and third party permits, licenses, approvals and consents necessary in connection with the execution, delivery and performance of the Loan Documents by the Obligor, the consummation by the Obligor of their obligations in respect of Transactions or the operation and conduct of the Obligor’s business and ownership of their properties (including their Product Commercialization and Development Activities).

(u) **Fees, Expenses, Etc.** The Agent shall have received (or shall substantially contemporaneously with the funding of the Restatement Date Loans receive) for its account and the account of each Lender, all fees required to be paid on the Restatement Date under the Fee Letter and all other fees, costs and expenses due and payable pursuant to **Section 14.03**.

**6.02 Conditions to Tranche 2 Loan.** The obligation of each Lender to make the Tranche 2 Loan on the Tranche 2 Borrowing Date shall be subject to the prior making of the Restatement

Date Loan on the Restatement Date, the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, the delivery of a funds flow memorandum summarizing, in reasonable detail, the use of proceeds of such Tranche 2 Loan, and the prior or concurrent satisfaction (or waiver thereof by the Agent) of each of the conditions precedent set forth below in this **Section 6.02**.

(a) **Tranche 2 Borrowing Date Certificate.** The following statements shall be true and correct, and the Agent shall have received a certificate, dated as of the Tranche 2 Borrowing Date (the “*Tranche 2 Borrowing Date Certificate*”), in form and substance reasonably satisfactory to the Agent, duly executed and delivered by a Responsible Officer of Parent and the Borrower representing, warranting and certifying that both immediately before and immediately after giving effect to the Borrowing of the Tranche 2 Loan:

(i) the representations and warranties set forth in each Loan Document that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct as of such earlier date;

(ii) the representations and warranties set forth in each Loan Document that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date;

(iii) no Event of Default has occurred and is continuing, or would reasonably be expected to result from the Borrowing of the Tranche 2 Loan or the consummation of any Transactions contemplated to occur on the Tranche 2 Borrowing Date; and

(iv) the Borrower and the Obligors (as applicable) are in compliance with the financial covenants set forth in **Section 10** (both immediately before, and immediately after, giving effect to the Borrowing of the Tranche 2 Loan);

provided that, with respect to the representation, warranty and certification referenced in clauses (i) and (ii) above relating to representations and warranties set forth in each Loan Document, (1) references in such representations and warranties to “the Restatement Date” shall be deemed to be references to the “Tranche 2 Borrowing Date” and (2) Parent and the Borrower may supplement the schedules to this Agreement and the other Loan Documents as reasonably necessary in order for such certification to be true and correct on the Tranche 2 Borrowing Date. All documents and agreements required to be appended to the certificate delivered pursuant to this **Section 6.02(a)**, if any, shall have been, as applicable, executed and delivered by the requisite parties, and shall, as applicable, be in full force and effect.

(b) **Delivery of Notes.** To the extent requested in writing at least five (5) Business Days prior to the requested funding date of the Tranche 2 Loan, the Agent shall have received a Note in favor of each Lender evidencing such Lender’s Tranche 2 Loan, duly executed and delivered by a Responsible Officer of the Borrower.

(c) **Use of Proceeds.** The Agent shall have received a certificate of a Responsible Officer of the Borrower certifying that the proceeds of the Tranche 2 Loan will be used solely for the redemption of the Existing 2025 Convertible Notes in full.

(d) **Fees, Expenses, Etc.** The Agent shall have received for its account and the account of each Lender, (i) all fees accrued through the applicable Borrowing Date hereunder and under the Fee Letter, (ii) all fees payable in connection with the borrowing of the Tranche 2 Loan and (iii) reimbursement of all other reasonable and documented (in reasonable detail) out-of-pocket costs and expenses, if any, due and payable pursuant to **Section 14.03** (including the Agent's and the Lenders' reasonable and documented (in reasonable detail) out-of-pocket legal fees and expenses), in the case of this clause (iii), to the extent invoiced and sent to the Borrower no later than one (1) Business Day prior to the applicable Borrowing Date.

**6.03 Conditions to Tranche 3 Loans.** In the event (and only in the event) the Majority Lenders consent to make and a Lender affirmatively elects to participate in, a Tranche 3 Loan, in whole or in part, as provided in **Section 2.01** above, the obligation of the Lenders to fund their Proportionate Share of such Tranche 3 Loan shall be subject to:

- (a) the delivery of a Borrowing Notice by the Borrower;
- (b) the delivery of a funds flow memorandum by the Borrower summarizing, in reasonable detail, the application of proceeds of such Tranche 3 Loan;
- (c) the payment of such upfront fees as may be agreed by the Lenders providing such Tranche 3 Loan and the Borrower; and
- (d) the prior or concurrent satisfaction (or waiver thereof by the Lenders providing such Tranche 3 Loan) of such customary additional conditions as the Lenders may reasonably request (including some or all conditions of the type set forth in **Sections 6.01** and/or **6.02**);

provided that with respect to any, if any, representation, warranty and certification delivered in connection with the foregoing relating to representations and warranties set forth in each Loan Document, (1) references in such representations and warranties to "the Restatement Date" shall be deemed to be references to the applicable "Tranche 3 Borrowing Date" and (2) Parent and the Borrower may supplement the schedules to this Agreement and the other Loan Documents as reasonably necessary in order for such certification to be true and correct on such Tranche 3 Borrowing Date.

## **SECTION 7 REPRESENTATIONS AND WARRANTIES**

The Obligors hereby jointly and severally represent and warrant to the Agent and each Lender, that:

**7.01 Power and Authority.** Each of the Obligors and their Subsidiaries (i) is duly organized or incorporated and validly existing under the laws of its jurisdiction of organization or incorporation, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own its assets and carry on its business as now being or as proposed to be

conducted, including all Regulatory Approvals, (iii) is qualified to do business and, to the extent such concept is recognized in such jurisdictions as are applicable, is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect, and (iv) has full power, authority and legal right to enter into and perform its obligations under each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder.

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

**7.03 Governmental and Other Approvals; No Conflicts.** No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person (other than those that have been duly obtained or made and which are in full force and effect) is required for the due execution, delivery or performance by any Obligor of any Loan Document to which it is a party, except for filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents. The execution, delivery and performance by each Obligor of each Loan Document to which it is a party will not (i) violate or conflict with any Law, (ii) violate or conflict with any Organic Document of such Obligor, (iii) violate or conflict with any applicable Governmental Approval of any Governmental Authority, (iv) violate or result in a default under any Material Agreement binding upon Parent or any of its Subsidiaries that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect or (v) result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of such Obligor. Each Obligor, its Subsidiaries and their respective properties and businesses are in compliance in all material respects with all applicable Laws (including Healthcare Laws) and Governmental Approvals applicable to such Person and its properties or businesses, as the case may be.

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

(a) **Financial Statements.** Parent has heretofore furnished to the Agent and the Lenders certain consolidated financial statements as provided for in **Section 6.01(f)**. Such financial statements, and all other financial statements delivered by Parent to the Agent and the Lenders (whether prior to the Restatement Date, pursuant to **Section 8.01** or otherwise) present fairly, in all material respects, the consolidated financial position and results of operations, cash flows and shareholders' equity of Parent and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of

footnotes in the case of the statements of the type described in **Section 8.01(b)**. Neither Parent nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments which are required to be disclosed but are not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change.** Since December 31, 2022, there has been no Material Adverse Change.

## **7.05 Properties.**

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

(b) **Products. Schedule 7.05(b)** contains a complete and accurate list and description (in reasonable detail) of all commercial or clinical development-stage Products (set forth on an Obligor-by-Obligor or Subsidiary-by-Subsidiary basis, as the case may be) as of the Restatement Date.

### (c) **Intellectual Property.**

(i) **Schedule 7.05(c)** contains, with respect to each Obligor and each of its Subsidiaries (set forth on an Obligor-by-Obligor or Subsidiary-by-Subsidiary basis), in each case, as of the Restatement Date:

(A) a complete and accurate list of all pending Patent applications or registered Patents, owned by or licensed to any Obligors or any of its Subsidiaries, which would qualify as Material Intellectual Property including the jurisdiction and patent number, and as to each such registered Patent shall indicate if such Patent covers a Product or its use and shall specify which such Product its claims cover;

(B) a complete and accurate list of all material pending Trademark applications for, or registered Trademarks, owned by or licensed to an Obligor or any of its Subsidiaries, including the jurisdiction, trademark application or registration number and the application or registration date, which would qualify as Material Intellectual Property;

(C) a complete and accurate list of all pending Copyright registrations or registered Copyrights, owned by or licensed to any Obligor or any of its Subsidiaries, which would qualify as Material Intellectual Property; and

(D) a complete and accurate list of all Technical Information which would qualify as Material Intellectual Property.

(ii) An Obligor is the absolute registered legal owner of all right, title and interest in and to the Material Intellectual Property owned by such Person (including, without limitation, any Material Intellectual Property indicated on **Schedule 7.05(c)**) with good and marketable title, free and clear of any Liens or Claims of any kind whatsoever other than Permitted Liens, and such Person has the right to exercise its rights under such Intellectual Property in the ordinary course of its businesses as currently conducted or as anticipated to be conducted. Without limiting the foregoing, as of the Restatement Date, except as set forth on **Schedule 7.05(c)**:

(A) other than as permitted by **Section 9.09** none of the Obligors nor any of their Subsidiaries has transferred ownership of any of its Intellectual Property that qualifies as Material Intellectual Property, in whole or in part, to any Person who is not an Obligor;

(B) other than (1) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, or (2) as would not have been prohibited by **Section 9.18**, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Permitted Liens), Claims, or other agreements or arrangements relating to or otherwise materially and adversely affecting any Material Intellectual Property, including any development, submission, services, research, license or support agreements, which materially bind, obligate or otherwise restrict an Obligor or any of its Subsidiaries with respect to any Material Intellectual Property;

(C) the use by an Obligor or any of its Subsidiaries of any of its respective Intellectual Property in the ordinary course of such Person's business as currently conducted or as anticipated to be conducted does not breach, violate, infringe or interfere with or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person, which infringement, interference and/or misappropriation would reasonably be expected to result in a Material Adverse Effect;

(D) (1) there are no pending or, to any Obligor's knowledge, threatened Claims against any Obligor or any of its Subsidiaries asserted by any other Person relating to any Material Intellectual Property including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property; and (2) none of the Obligors nor any of their Subsidiaries has received any written notice from, or Claim by, any other Person that the business of any Obligor or any of its Subsidiaries as currently conducted or as anticipated to be conducted, the use of Material Intellectual Property by any Obligor or any of its Subsidiaries in the conduct of the Obligors' business as currently conducted or as anticipated to be conducted, or any Product Commercialization and Development Activities with respect to any Product, infringes upon, violates or constitutes a misappropriation of, or may infringe upon, violate or constitute a misappropriation of, or otherwise interfere with, or otherwise offering a license with respect to, any Intellectual Property of any such other Person, in each case, in any material respect, which have not been finally resolved;

(E) none of the Obligors has knowledge that any Material Intellectual Property is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of Parent; and, without limiting the foregoing, none of the Obligors nor any of their Subsidiaries has put any other Person on notice of actual or potential infringement, violation or misappropriation of any Material Intellectual Property and none of the Obligors nor any of their Subsidiaries has initiated the enforcement of any Claim with respect to any Material Intellectual Property;

(F) all relevant current and former employees and contractors of each Obligor and each of its Subsidiaries who contributed within the scope of their employment or engagement, as applicable, to the creation or development of any Material Intellectual Property have executed written confidentiality and valid and enforceable invention assignment Contracts with such Obligor or such Subsidiary, as applicable, that irrevocably (to the extent permitted under applicable Law) assigns to such Obligor or such Subsidiary, as applicable, or its designee all rights of such employees and contractors to any such Material Intellectual Property;

(G) [reserved];

(H) each Obligor and each of its Subsidiaries have made available to the Agent accurate and complete copies of all Material Agreements relating to Material Intellectual Property that have been requested by the Agent in writing; and

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

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

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

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

(C) all such Patents are in good standing and none of the Patents, or the Inventions claimed in any such Patent, have been dedicated to the public except as a result of intentional decisions made by the Borrower or any of its Subsidiaries;

(D) to the knowledge of the Borrower and its Subsidiaries, all prior art material to such Patents was adequately disclosed to or considered by the respective patent offices during prosecution of such Patents to the extent required by applicable Law;

(E) subsequent to the issuance of such Patents, none of the Obligors nor any of their Subsidiaries nor any of their respective predecessors-in-interest, has filed any

disclaimer or made or permitted any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) to the Obligors' knowledge, (1) no allowable or allowed claim in such Patents is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any third party, and such claims have not been the subject of any interference, and are not and have not been the subject of any re-examination, opposition or any other post-grant proceedings, and (2) none of the Obligors nor any of their Subsidiaries has knowledge of any basis for any such interference, re-examination, opposition, *inter partes* review, post grant review or any other post-grant proceedings;

(G) none of the Patents owned by or licensed to an Obligor or any of its Subsidiaries have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable patent office recorded with respect to any Patents, none of the Obligors nor any of their Subsidiaries has received any written notice asserting that such Patents are invalid, unpatentable or unenforceable; if any of such Patent is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) none of the Obligors nor any of their Subsidiaries has received an opinion, whether preliminary in nature or qualified in any manner, which concludes that a challenge to the validity or enforceability of any Patents owned by or licensed to an Obligor or any of its Subsidiaries is more likely than not to succeed;

(I) none of the Obligors, nor any of their Subsidiaries nor any prior owner of any Patent, or any of their respective agents or representatives, has engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any Patent that constitutes Material Intellectual Property; and

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

(iv) The Obligors own or hold rights to all Material Intellectual Property to conduct all Product Commercialization and Development Activities relating to the Products as such activities are currently conducted or as anticipated to be conducted.

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

(a) **Litigation.** As of the Restatement Date, except as specified on **Schedule 7.06(a)**, there is no litigation, investigation or proceeding pending or, to the knowledge of any Obligor or any of its Subsidiaries, threatened, with respect to any Obligor or any of its Subsidiaries by or before any Governmental Authority or arbitrator that (i) could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event, or (ii) involves this Agreement, any other Loan Document, or the Transactions.



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

(c) **Labor Matters.** There are no strikes, lockouts or other labor disputes against any Obligor or any of their Subsidiaries or, to the knowledge of each Obligor, threatened in writing in writing against or affecting such Obligor or any of its Subsidiaries, and no unfair labor practice complaint is pending against such Obligor or any of its Subsidiaries or, to the knowledge of such Obligor, threatened in writing against any of them before any Governmental Authority that, individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect. Except as set forth on **Schedule 7.06(c)**, as of the Restatement Date, none of the Obligors nor any of their Subsidiaries is a party to any collective bargaining agreements or similar Contracts, no union representation exists on any facilities of any Obligor or any of its Subsidiaries and none of the Obligors nor any of their Subsidiaries has any knowledge of any union organizing activities that are taking place.

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

(a) Each Obligor and each of its Subsidiaries is in compliance with all applicable Laws and all Contracts binding upon it or its property (other than with respect to Material Intellectual Property, as covered in **Section 7.05(c)**), except where the failure to do so could not individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event. No Event of Default has occurred and is continuing, or will occur as a result of, any Borrowing hereunder.

(b) Without limiting the generality of the foregoing, each Obligor and each of its Subsidiaries is in compliance with all applicable Healthcare Laws and Healthcare Permits, except where failure to do so would not reasonably be expected to result in a Material Adverse Effect, and none of the Obligors nor any of their Subsidiaries has received written notice from any Governmental Authority of any material violation (or of any investigation, audit, or other proceeding involving allegations of any violation) of any Healthcare Laws, and no such investigation, inspection, audit or other proceeding involving allegations of any such violation has been, to the knowledge of such Obligor or any Subsidiary, as applicable, threatened in writing.

(c) Each physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to an Obligor or any of its Subsidiaries (collectively, a “**Referral Source**”) who has a direct ownership, investment, or financial interest in such Obligor or any such Subsidiary paid fair market value for such ownership, investment or financial interest; any ownership or investment returns distributed to any Referral Source is in proportion to such Referral Source’s ownership, investment or financial interest; and no preferential treatment or more favorable terms were or are offered to such Referral Source compared to investors or owners who are not in a position to refer patients or other business. None of the Obligors nor any of their Subsidiaries, directly or indirectly, has or will guarantee a loan, make a payment toward a loan or otherwise subsidize a loan for any Referral Source

including, without limitation, any loans related to financing the Referral Source's ownership, investment or financial interest in any such Obligor or any such Subsidiary.

(d) Without limiting the generality of the foregoing, except where noncompliance individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event, all financial relationships between or among an Obligor and its Subsidiaries, on the one hand, and any Referral Source, on the other hand (A) comply with all applicable Healthcare Laws including, without limitation, the Federal Anti-Kickback Statute, the Stark Law and other applicable anti-kickback and self-referral laws, whether U.S. or non-U.S.; (B) reflect fair market value, have commercially reasonable terms, and were negotiated at arm's length; and (C) do not obligate any Referral Source to purchase, use, recommend or arrange for the use of any products or services of such Obligor or any of its Subsidiaries.

(e) None of the Obligors nor any of their Subsidiaries is debarred or excluded from participation under any state or federal health care program or under any federal Law, including any state or federal workers compensation programs.

(f) None of the Obligors nor any of their Subsidiaries is a party to any corporate integrity agreements, deferred prosecution agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with, or imposed by, any Governmental Authority, except that which could, individually or in the aggregate, not reasonably be expected to result in a Material Adverse Effect.

**7.08 Taxes.** Each Obligor and each of its Subsidiaries has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (i) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which such Obligor or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (ii) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**7.09 Full Disclosure.** None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Obligors to the Agent or any Lender (other than information of a general economic or industry nature) in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contained, as of the date such report, statement, or certificate was so furnished any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; provided that, with respect to projected financial information, each Obligor represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood by the Agent and the Lenders that such projected financial information is not to be viewed as facts, and that no assurances can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material).

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

(a) **Investment Company Act.** None of the Obligors nor any of their Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(b) **Margin Stock.** None of the Obligors nor any of their Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, Regulation U or Regulation X.

**7.11 Solvency.** Parent and its Subsidiaries, on a consolidated basis, are, and, immediately after giving effect to the Borrowing and the use of proceeds thereof, will be Solvent.

**7.12 Equity Holders, Subsidiaries and Other Investments.**

(a) As of the Restatement Date:

(i) Set forth on **Schedule 7.12(a)** is a complete and correct list of all direct and indirect Subsidiaries of Parent;

(ii) Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in **Schedule 7.12(a)**; and

(iii) the percentage ownership by Parent of each such Subsidiary thereof is as shown in **Schedule 7.12(a)**.

(b) As of the Restatement Date:

(i) Set forth on **Schedule 7.12(b)** is a complete and correct list of all other Equity Interests owned or held by Parent or any of its direct or indirect Subsidiaries in any Person that does not qualify as a direct or indirect Subsidiary of Parent; and

(ii) **Schedule 7.12(b)** also sets forth, in reasonable detail, the type of Equity Interest held by each Obligor in such other Person and the fully-diluted percentage ownership held beneficially by Parent or one or more of its Subsidiaries, as the case may be, in such other Person.

**7.13 [Reserved].**

**7.14 Material Agreements.** Set forth on **Schedule 7.14** is a complete and correct list of each Material Agreement as of the Restatement Date. None of the Obligors nor any of their Subsidiaries is (i) in default under any such Material Agreement, (ii) has knowledge of any default by any counterparty to any such Contract and there are no pending or (iii) to any Obligor’s knowledge, threatened (in writing) Claims against any Obligor or any of its Subsidiaries asserted by any other Person relating to any such Contract, including any Claims of breach or default under any such Contract, except, with respect to **clauses (i)-(iii)**, which,

individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. None of the Obligor's nor any of their Subsidiaries has received any information from, or Claim by, any Person that any Material Agreement is breached or is in default, except which, individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect. There are no outstanding (and none of the Obligor's has knowledge of), any threatened (in writing) disputes or disagreements with respect to any Material Agreement, except which, individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect. As of the Restatement Date, except as otherwise disclosed on **Schedule 7.14**, and except which, individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect, all such Material Agreements are in full force and effect without material modification from the form in which the same were filed as an exhibit to any of such Obligor's reports filed with the Securities Exchange Commission or with modifications not expressly prohibited by **Section 9.12**. Notwithstanding anything herein to the contrary, **Schedule 7.14** shall be automatically amended, without the need of any further action by any Person, pursuant to any disclosure by any Obligor of a new Material Agreement (or the removal thereof) filed as an exhibit to any of such Obligor's reports filed with the Securities Exchange Commission.

**7.15 Restrictive Agreements.** Except as set forth on **Schedule 7.15**, none of the Obligor's nor any of their Subsidiaries is subject to any Restrictive Agreement, except those permitted under **Section 9.11**.

**7.16 Real Property.** As of the Restatement Date, except as set forth on **Schedule 7.16**, none of the Obligor's nor any of their Subsidiaries owns or leases (as tenant thereof) (excluding any co-working arrangements) any real property.

**7.17 Pension Matters.** **Schedule 7.17** sets forth a complete and correct list of, and that separately identifies, (i) all Title IV Plans, (ii) all Multiemployer Plans and (iii) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other applicable Law so qualifies. Except for those that could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, (A) each Benefit Plan and Foreign Pension Plan is in compliance with all applicable provisions of ERISA, the Code or other applicable Law, (B) there are no existing or pending or, to the knowledge of any Obligor, threatened Claims (other than routine claims for benefits in the normal course of business), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which an Obligor or any Subsidiary thereof incurs or otherwise has or would reasonably be expected to have an obligation or any liability or Claim and (C) no ERISA Event is reasonably expected to occur. Each Obligor and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and none of the Obligor's, nor any of their Subsidiaries nor any of their ERISA Affiliates knows of any facts or circumstances that would reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. Except as could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably

expected to occur in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

**7.18 Priority of Obligations.** No monetary Obligation arising hereunder or under any Loan Document, or arising in connection herewith or therewith, is subordinated to any other Indebtedness, except as may from time to time be agreed, be consented to or otherwise result from the action of the Agent or any Lender.

**7.19 Regulatory Approvals.**

(a) Each Obligor and each of its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all Regulatory Approvals, including all Healthcare Permits, necessary or required for such Obligor and each of its Subsidiaries to conduct their respective operations and businesses, including all Product Commercialization and Development Activities, in the manner currently conducted and as anticipated to be conducted in the ordinary course of business.

(b) As of the Restatement Date:

(i) set forth on **Schedule 7.19(b)** is a complete and accurate list of all Regulatory Approvals of the type described in **Section 7.19(a)** above, which schedule sets forth the Obligor or Subsidiary that holds such Regulatory Approval and briefly explains the purpose of such Regulatory Approval;

(ii) all such Regulatory Approvals are (A) legally and beneficially owned or held exclusively by the applicable Obligor or Subsidiary, as the case may be, free and clear of all Liens other than Permitted Liens, (B) validly registered and on file with the applicable Regulatory Authority, in compliance with all registration, filing and maintenance requirements (including any fee requirements) thereof, and (C) valid, enforceable, in good standing, and in full force and effect with the applicable Regulatory Authority in all respects; and

(iii) all required notices, registrations, listing, supplemental applications or notification reports (including field alerts or other reports of adverse experiences) and other required filings have been filed with the appropriate Regulatory Authority, and all such filings are complete and correct and are in compliance with all applicable Laws. Parent and each of its Subsidiaries have disclosed to the Agent all such regulatory filings and all material communications between representatives of the Obligors and each of their Subsidiaries and any Regulatory Authority.

**7.20 Transactions with Affiliates.** Except as set forth on **Schedule 7.20**, none of the Obligors nor any of their Subsidiaries has entered into, renewed, extended or been a party to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind, other than services of any director, officer or employee of such Obligor or Subsidiary, as applicable) with any Affiliate on the Restatement Date in violation of **Section 9.10**.

**7.21 Sanctions.** None of the Obligor nor any of their Subsidiaries, nor, to the knowledge of each Obligor, any of their respective directors, officers, or employees nor, to the knowledge of each Obligor, any agents or other Persons acting on behalf of any of the foregoing (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction or (iv) is or has ever been in violation of or subject to an investigation relating to Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or indirectly, to lend, contribute or provide to, or has been or will be otherwise made available to fund, any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Agent, the Lenders and their Affiliates) of Sanctions.

**7.22 Anti-Corruption.** None of the Obligor nor any of their Subsidiaries, nor, to the knowledge of each Obligor, any of their respective directors, officers or employees nor, to the knowledge of each Obligor, any agents or other Persons acting on behalf of any of the foregoing, directly or indirectly, has (i) violated or is in violation of any applicable anti-corruption Law, (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or indirectly, any Prohibited Payment or (iii) been subject to any investigation by any Governmental Authority with regard to any actual or alleged Prohibited Payment.

**7.23 [Reserved].**

**7.24 Royalties and Other Payments.** As of the Restatement Date, except as set forth on **Schedule 7.24**, none of the Obligor nor any of their Subsidiaries is obligated, pursuant to any Contract or otherwise, to pay any royalty, milestone payment, deferred payment or any other contingent payment in respect of any Product.

**7.25 Non-Competes.** None of the Obligor nor any of their Subsidiaries nor any of their respective directors, officers or employees is subject to a non-compete agreement that prohibits or will interfere with any of the Product Commercialization and Development Activities, including the development, commercialization or marketing of any Product, except which, would not reasonably be expected to result in a Material Adverse Effect

**7.26 Internal Controls.** Parent acknowledges that its management is responsible for the preparation and fair presentation of the financial statements of Parent and each of its Subsidiaries provided to the Agent and the Lenders pursuant to **Sections 8.01(b)** and **8.01(c)**, in each case, in accordance with GAAP. Parent has designed, implemented and maintained internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

## **SECTION 8 AFFIRMATIVE COVENANTS**

The Obligor jointly and severally covenant and agree, for the benefit of the Agent and the Lenders, that until the Commitments have expired or been terminated and all Obligations

(other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been paid in full in cash:

**8.01 Financial Statements and Other Information.** Parent shall furnish to the Agent (with sufficient copies for each Lender):

(a) Within ten (10) days after the end of each calendar month of each fiscal year, proof of the Borrower's compliance with **Section 10.01**, which proof may be in the form of copies of one or more bank statements demonstrating such compliance, accompanied by a certification thereof from the chief financial officer of the Borrower.

(b) Within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year, (i) an unaudited consolidated balance sheet of Parent and its Subsidiaries as of the end of such fiscal quarter, and (ii) the related unaudited consolidated statements of income, shareholders' equity and cash flows of Parent and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case, prepared in accordance with GAAP consistently applied (subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes), all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of Parent stating that such financial statements (x) fairly present in all material respects the financial condition of Parent and its Subsidiaries as at such date and the results of operations of Parent and its Subsidiaries for the period ended on such date and (y) have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this **Section 8.01(b)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR".

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

(d) (i) together with the financial statements required pursuant to **Sections 8.01(b)** and **8.01(c)**, a Compliance Certificate delivered by the chief financial Responsible Officer of Parent as of the end of the applicable accounting period, substantially in the form of **Exhibit E** including a summary of Revenue generated by the Products (in reasonable detail and in a manner

that segregates Revenue by type of Product) and which evidences the Obligor's compliance with **Section 10.02** and, with respect to the financial statements delivered pursuant to **Section 8.01(c)**, details of any issues that are material that are raised by Parent's auditors and (ii) together with the financial statements required pursuant to **Sections 8.01(b)** and **8.01(c)**, a management discussion and analysis, prepared in writing and in reasonable detail, discussing Parent's financial condition and results of operations as set forth in such financial statements.

(e) As soon as available and in any event no later than ninety (90) days following the end of each fiscal year of Parent, copies of an annual budget (or equivalent) for Parent and its Subsidiaries, approved by Parent's Board, for the then current fiscal year, in form reasonably satisfactory to the Agent, accompanied by a certificate of the chief financial officer of Parent certifying (in his or her capacity as an officer of Parent and not in his or her individual capacity) that the projections underlying such budget are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such projections are incorrect or misleading in any material respect.

(f) Promptly, and in any event within five (5) Business Days after receipt thereof by Parent or any of its Subsidiaries, copies of each material notice or other material correspondence received from any securities regulator or exchange to the authority of which Parent may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of Parent or any such Subsidiary; provided that documents required to be furnished pursuant to this **Section 8.01(f)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR".

(g) Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to all the stockholders of Parent or any of its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which Parent or any of its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which Parent or any such Subsidiary, as applicable, may become subject from time to time; provided that documents required to be furnished pursuant to this **Section 8.01(g)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR".

(h) The information regarding insurance maintained by Parent and its Subsidiaries as required under **Section 8.05**.

(i) Such other information respecting the operations, properties, business, liabilities or condition (financial and otherwise) of Parent and each of its Subsidiaries (including with respect to the Collateral) as the Agent or any Lender may from time to time reasonably request.

**8.02 Notices of Material Events.** Parent and the Borrower shall furnish to the Agent written notice of each of the following within the time period specified therein (or, if no such time period is specified, on or within ten (10) days (or such longer or shorter period as may be expressly set forth below) after any Responsible Officer of Parent or the Borrower first learns of or acquires knowledge with respect to any of the below events or circumstances):

(a) The occurrence of any Default.



(b) The occurrence of any event with respect to any property or assets of Parent or any of its Subsidiaries resulting in a Loss, which notice shall include whether such loss is covered by insurance or if the insurance carrier has disclaimed coverage of such Loss aggregating \$3,000,000 (or the Equivalent Amount in other currencies) or more.

(c) Any Claim, action, suit, notice of violation, hearing, investigation or other proceedings pending, or to Parent knowledge, threatened (in writing) against or affecting Parent or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, whether made by a Governmental Authority or other Person that, if adversely determined would reasonably be expected to result in a Material Adverse Effect.

(d) (i) On or prior to the date of any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) promptly, and in any event within ten (10) days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know (A) that an ERISA Event has occurred or is reasonably expected to occur or (B) that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect to either of the foregoing, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto.

(e) (i) The termination of any Material Agreement other than in accordance with its terms, including as a result of a breach or default; (ii) the receipt by Parent or any of its Subsidiaries of any material notices of default under any Material Agreement that could give rise to an early termination thereof (and a copy thereof); (iii) the entering into of any new Material Agreement by Parent or any of its Subsidiaries (and a copy thereof); or (iv) any material amendment to a Material Agreement (and a copy thereof); provided that notice shall be deemed to have been furnished to Agent via a disclosure by any Obligor of any of the items described in this **clause (e)** by a filing of an exhibit to any of such Obligor's reports filed with the Securities Exchange Commission.

(f) As, when and to the extent required therein, the reports and notices as required by the Security Documents.

(g) Within thirty (30) days of the date thereof, or, if earlier, on the date of delivery of any financial statements pursuant to **Section 8.01**, notice of any material change in accounting policies or financial reporting practices by the Obligors; provided that disclosure in the notes to such financial statements, if any, shall be deemed to satisfy the requirements of this **Section 8.02(g)**.

(h) Notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving Parent or any of its Subsidiaries which would reasonably be expected to result in a Material Adverse Effect.

(i) Any licensing agreement or similar arrangement entered into by Parent or any of its Subsidiaries in connection with any infringement or alleged infringement of any Material Intellectual Property of another Person.

(j) Concurrently with the delivery of a Compliance Certificate pursuant to **Section 8.01(d)**, notice of the creation, development or other acquisition of any Intellectual Property by Parent or any of its Subsidiaries after the Restatement Date and during such prior fiscal quarter or fiscal year, as the case may be, for which such financial statements were delivered, which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority.

(k) Any change to any Obligor's ownership of Deposit Accounts, Securities Accounts and Commodity Accounts (in each case, other than Excluded Accounts), by delivering to the Agent, a notice setting forth a complete and correct list of all such accounts as of the date of such change.

(l) The acquisition by any Obligor or any of its Subsidiaries, in a single or series or related transactions, of any fee interest in any real property having a fair market value in excess of \$2,500,000.

(m) [reserved].

(n) The occurrence of any material product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, to be undertaken or issued by an Obligor, any Subsidiary thereof or their respective suppliers whether or not at the request, demand or order of any Governmental Authority or otherwise with respect to any Product, or any basis for undertaking or issuing any such action or item;

(o) The occurrence or existence of any event, circumstance, act or omission that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect or a Material Regulatory Event.

Each notice delivered under this **Section 8.02** (other than any notice delivered pursuant to **Section 8.02(e)(iii)** or **(iv)**) shall be accompanied by a statement of a Responsible Officer of Parent and the Borrower setting forth summary details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

**8.03 Existence; Conduct of Business.** Each Obligor shall, and shall cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and all Governmental Approvals necessary or material to the conduct of its business; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

**8.04 Payment of Obligations.** Each Obligor shall, and shall cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all Taxes, fees, assessments and governmental

charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful Claims for labor, materials and supplies which, if unpaid, might become a Lien (other than a Permitted Lien) upon any properties or assets of such Obligor or any of its Subsidiaries, except to the extent such Taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP, and (ii) all other lawful Claims which, if unpaid, would by Law become a Lien upon any properties or assets of such Obligor or any of its Subsidiaries, other than any Permitted Lien.

**8.05 Insurance.** Each Obligor shall, and shall cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the reasonable request of the Agent, Parent shall furnish to the Agent from time to time: information as to the insurance carried by such Obligor and each of its Subsidiaries and, if so requested, copies of all such insurance policies. The Obligors shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed in a manner adverse to the insured Person without at least thirty (30) days' (or ten (10) days' for nonpayment of premium) prior written notice to the applicable Obligor and the Agent. Receipt of notice of cancellation or modification of any such insurance policies or reduction of coverage or amounts thereunder shall entitle any Secured Party to renew any such policies, cause the coverage and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the applicable Obligor (payable on demand). The amount of any such expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

**8.06 Books and Records; Inspection Rights.** Each Obligor shall, and shall cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Obligor shall, and shall cause each of its Subsidiaries to, permit any representatives designated by the Agent or any Lender, upon reasonable prior written notice, to, during normal business hours, visit and reasonably inspect its properties, to reasonably examine and make extracts from its books and records (excluding records subject to attorney-client privilege, subject to confidentiality agreements with third parties that preclude disclosure to any Secured Party (acting in such capacity) or subject to confidentiality restrictions pursuant to Law), and to discuss its affairs, finances and condition (financial or otherwise) with its officers, all at such reasonable times (but not more often than once per year unless an Event of Default has occurred and is continuing) as the Agent or the Lenders may reasonably request. Each Obligor shall pay all reasonable costs and expenses of all such inspections.

**8.07 Compliance with Laws and Other Obligations.** Each Obligor shall, and shall cause each of its Subsidiaries to, (i) comply in all respects with all applicable Laws and applicable Governmental Approvals (including Environmental Laws and all Healthcare Laws); and (ii) maintain in full force and effect, remain in compliance in all respects with, and perform in all material respects all terms of outstanding Material Agreements and all Healthcare Permits, in

each case, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

**8.08 Maintenance of Properties, Etc.** Each Obligor shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities or otherwise, necessary in the proper conduct of its business in good working order and condition in all material respects in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

**8.09 Licenses.** Each Obligor shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals (including all Healthcare Permits) necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties (including its Product Commercialization and Development Activities).

**8.10 Action under Environmental Laws.** Each Obligor shall, and shall cause each of its Subsidiaries to, upon becoming aware of the release of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, to restore their respective businesses, operations and properties to a condition in compliance with applicable Environmental Laws.

**8.11 Use of Proceeds.** The proceeds of the Loans shall be used only as provided in **Section 2.04**. Without limiting the foregoing, no part of the proceeds of the Loans shall be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulation T, Regulation U and Regulation X.

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

(a) **Subsidiary Guarantors.** Parent and the Borrower shall take such action from time to time as shall be necessary to ensure that (x) it and each of its Subsidiaries that is a party to this Agreement as of the Restatement Date will be and will remain an Obligor and Subsidiary Guarantor hereunder (except as otherwise permitted by **Section 9.03**), and (y) each of its other Subsidiaries (other than any Immaterial Subsidiary), whether direct or indirect, now existing or hereafter created, will, within (x) thirty (30) days of becoming a Subsidiary organized under the laws of the United States or (y) sixty (60) days of becoming a Foreign Subsidiary (in each case, as may be extended by the Agent in its reasonable discretion) or ceasing to constitute an Immaterial Subsidiary, become an “Obligor” and a “Subsidiary Guarantor” pursuant to this **Section 8.12**. Without limiting the generality of the foregoing, if Parent or any of its Subsidiaries form or acquire any new Subsidiary (other than any Immaterial Subsidiary) or if a Subsidiary ceases to constitute an Immaterial Subsidiary, then Parent and the Borrower shall (unless otherwise agreed by the Agent in its sole discretion), within thirty (30) days (or sixty (60) days, as the context may require) of such event:

(i) cause such Subsidiary to become an “Obligor” and a “Subsidiary Guarantor” hereunder, a “Grantor” (or the equivalent thereof) under the applicable Security Documents, and a “Subsidiary Party” under the Intercompany Subordination Agreement;

(ii) take such action or cause such Subsidiary to take such action (including joining the Security Agreement or the applicable Security Documents and delivering certificated Equity Interests together with undated transfer powers executed in blank, applicable control agreements, and other instruments) as shall be necessary or reasonably desirable by the Agent to create and perfect, in favor of the Agent, for the benefit of the Secured Parties valid and enforceable first priority Liens (subject to Permitted Liens) on the Collateral of such new Subsidiary as collateral security for the Obligations hereunder;

(iii) to the extent that the parent of such Subsidiary is not a party to the Security Agreement or has not otherwise pledged Equity Interests in its Subsidiaries in accordance with the terms of the Security Agreement and this Agreement, cause such parent of such Subsidiary to execute and deliver a pledge agreement in favor of the Agent, for the benefit of the Secured Parties, in respect of all outstanding issued Equity Interests of such Subsidiary for the purpose of creating and perfecting, in favor of the Agent for the benefit of the Secured Parties, a valid and perfected first priority Lien (subject to Permitted Liens) on such Equity Interests; and

(iv) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** or as the Agent shall have reasonably requested.

(b) **Further Assurances.**

(i) Each Obligor shall, and shall cause each of its direct or indirect Subsidiaries (including any newly formed or newly acquired Subsidiaries) to take such action from time to time as shall reasonably be requested by the Agent to effectuate the purposes and objectives of this Agreement (including this **Section 8.12**) and the applicable Security Documents.

(ii) In the event that Parent or any of its Subsidiaries holds or acquires Obligor Intellectual Property during the term of this Agreement or any other material assets or properties, then, upon the written request of the Agent, Parent or any such Subsidiary shall take any action as shall be necessary or reasonably desirable to ensure that the provisions of this Agreement and the Security Agreement shall apply thereto and any such Obligor Intellectual Property or other assets or properties shall constitute part of the Collateral under the Security Documents.

(iii) Without limiting the generality of the foregoing, within ten (10) Business Days (or such longer period that the Agent and the Borrower reasonably and mutually agree) following written request from the Agent, Parent and the Borrower shall cause each Person that is required to be a Subsidiary Guarantor or an Obligor hereunder to take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments, and delivering certificated Equity Interests together with undated transfer powers executed in blank) as shall be reasonably requested by the Agent to

create, in favor of the Secured Parties, a first priority perfected security interests and Lien (subject to Permitted Liens) in substantially all of the assets and property of such Person as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the applicable Security Documents.

(iv) In the event that the Borrower delivers a notice to the Agent pursuant to **Section 8.02(I)** in respect of real property with a value in excess of \$2,500,000, upon the written request of the Agent, Parent or any such Subsidiary shall execute and deliver a Mortgage with respect to such acquired real property to secure the Obligations.

(c) **Costs and Benefits.** Notwithstanding any term or provision of this **Section 8.12** to the contrary, without limiting the right of the Agent or the Lenders to require a Lien or a security interest in the Equity Interests of, or guaranty from, any newly acquired or created Subsidiary of Parent, or a Lien or security interest on any assets or properties of Parent or any of its Subsidiaries, so long as no Event of Default has occurred and is continuing, Parent and the Borrower may request in writing to the Agent that the Majority Lenders waive the requirements of this **Section 8.12** to provide a Lien, security interest or guaranty, as the case may be, due to the cost or burden thereof to Parent and its Subsidiaries (when taken as a whole) being unreasonably excessive relative to the benefit that would inure to the Secured Parties, and describing such cost or burden in reasonable detail. Upon receipt of any such written notice, the Agent shall review and consider such request with the Lenders in good faith and, within five (5) Business Days of receipt of such request, the Majority Lenders (after consultation with the Agent) shall determine in their sole but commercially reasonable discretion, and notify Parent and the Borrower of such determination, whether the Majority Lenders will grant such request for a waiver.

(d) **Cortendo.** The Borrower shall not be required to obtain any Swedish law guaranty documents or Security Documents in respect of Cortendo or Equity Interests in Cortendo other than the Swedish Pledge Agreement unless the revenues of Cortendo exceed 2.5% of the consolidated revenues of Parent and its consolidated Subsidiaries as set forth in the financial statements most recently delivered pursuant to **Sections 6.01, 8.01(b)** or **8.01(c)**, as applicable.

### **8.13 [Reserved].**

**8.14 Intellectual Property.** In the event that an Obligor or any of its Subsidiaries creates, develops or acquires Obligor Intellectual Property during the term of this Agreement, then the applicable provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents (other than to the extent such Obligor Intellectual Property constitutes an Excluded Asset), without further action by any party, in each case from and after the date of such creation, development, or acquisition (except that any applicable representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

**8.15 Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc.** Each Obligor shall, and shall cause each of its Subsidiaries (to the extent applicable) to, (i) use commercially reasonable best efforts to prepare, execute, deliver and file any and all agreements, documents or instruments, and to pay any costs and expenses, that are necessary or desirable to secure all material Regulatory Approvals, Material Agreements, Material Intellectual Property, Healthcare Permits and other rights, interests or assets (whether tangible or intangible) reasonably necessary for the operations of such Person's business, including any Product Commercialization and Development Activities, (ii) maintain in full force and effect, and pay all costs and expenses relating to, all such Regulatory Approvals, Material Agreements, Healthcare Permits and Material Intellectual Property owned, used or controlled by such Obligor or any such Subsidiary that are used in or reasonably necessary for the operations of such Person's business, including any Product Commercialization and Development Activities, (iii) promptly after obtaining knowledge thereof, notify the Agent of any infringement or violation by any Person of the Borrower's or any such Subsidiaries' Material Intellectual Property, and take commercially reasonable efforts to pursue any such infringement or other violation, (iv) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all new Material Intellectual Property created, developed or acquired by such Obligor or any of its Subsidiaries, as the case may be, that is necessary for the operations of the business of such Person, or in connection with any Product Commercialization and Development Activities relating to any Product, and (v) promptly after obtaining knowledge thereof, notify the Agent of any written Claim by any Person that the conduct of the business of such Obligor or any of its Subsidiaries, including in connection with any Product Commercialization and Development Activities, has infringed upon any Intellectual Property of such Person.

**8.16 ERISA and Foreign Pension Plan Compliance.** Each Obligor shall, and shall cause each of its Subsidiaries to, comply in all material respects with the provisions of ERISA or applicable Law with respect to any Plans or Foreign Pension Plans to which Parent or any such Obligor is a party as an employer.

**8.17 Cash Management.** Each Obligor shall, and shall cause each of its Subsidiaries to:

(a) subject to **Section 8.20**, maintain at all times all Deposit Accounts, Securities Accounts, Commodity Accounts, lockboxes and similar accounts (other than Excluded Accounts) to be held by each Obligor with a bank or financial institution that (i) in the case of such accounts in the United States, has executed and delivered to and in favor of the Agent a customary "springing" account control agreement, in form and substance reasonably acceptable to the Agent and (ii) in the case of such accounts located in Ireland, has been delivered a notice of assignment in respect of such account in accordance with the provisions of the relevant Irish Debenture (each such Deposit Account, Securities Account, Commodity Account, lockbox or similar account, a "**Controlled Account**");

(b) maintain each such Controlled Account as a cash collateral account, with each such cash collateral account and all cash, checks and other similar items of payment held in any such account to be Collateral securing payment of the Obligations, and each Obligor shall have granted a Lien and security interest to the Agent, for the benefit of the Secured Parties, over such Controlled Accounts;

(c) deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts receivable, Contracts or any other rights and interests into one or more Controlled Accounts or Excluded Accounts; and

(d) at any time after the occurrence and during the continuance of an Event of Default, at the request of the Agent, direct all payments constituting proceeds of accounts receivable to be directed into lockbox accounts pursuant to agreements in form and substance reasonably satisfactory to the Agent.

**8.18 Conference Calls.** After delivery of the financial statements pursuant to **Sections 8.01(b)** and **8.01(c)**, at the request of the Agent, the Borrower shall cause its chief financial officer to participate in conference calls with the Agent and the Lenders to discuss, among other things, the financial condition of each Obligor and any financial or earnings reports; provided that such conference calls shall be held at reasonable times during normal business hours and, so long as no Event of Default has occurred and is continuing, not more frequently than once after delivery of each such financial statement.

**8.19 Existing Convertibles Notes; Subject Cash.**

(a) To the extent any Relevant Existing 2025 Convertible Note remains outstanding on its respective maturity date (as in effect on January 15, 2025), the Borrower shall redeem such Relevant Existing 2025 Convertible Note in full and for cash on such maturity date using either the proceeds of the Tranche 2 Loan or Subject Cash; provided that, any term or provision hereof to the contrary notwithstanding, if (A) as of the date of any such redemption, any Event of Default has occurred and is continuing or would occur as a result of such redemption or (B) both immediately before and after giving effect to such redemption, the Obligors are not (or would not be) in pro forma compliance with the financial covenants set forth in **Section 10**, no Subject Cash other than Non-Balance Sheet Cash Proceeds shall be permitted to be used for such redemption.

(b) To the extent any Relevant Existing 2028 Convertible Note remains outstanding on its respective maturity date (as in effect on January 15, 2028), the Borrower shall redeem such Relevant Existing 2028 Convertible Note in full and for cash on such maturity date using Subject Cash; provided that, any term or provision hereof to the contrary notwithstanding, if (A) as of the date of any such redemption, any Event of Default has occurred and is continuing or would occur as a result of such redemption or (B) both immediately before and after giving effect to such redemption, the Obligors are not (or would not be) in pro forma compliance with the financial covenants set forth in **Section 10**, no Subject Cash other than Non-Balance Sheet Cash Proceeds shall be permitted to be used for such redemption.

(c) At any time prior to the redemption of the Relevant Existing 2025 Convertible Notes and the Relevant Existing 2028 Convertible Notes in full, no Obligor shall use Non-Balance Sheet Cash Proceeds for any purpose other than (i) first, the redemption in full in cash of the Relevant Existing 2025 Convertible Notes on their respective maturity dates as in effect on January 15, 2025, and (ii) thereafter, the redemption in full in cash of Relevant Existing 2028 Convertible Notes on their respective maturity dates as in effect on January 15, 2028; provided



that, for the avoidance of doubt, this **Section 8.19(c)** shall not apply to Subject Cash that is not Non-Balance Sheet Cash Proceeds.

**8.20 Post-Closing Covenants.** The Borrower shall complete or shall cause to be completed each of the items set forth on Schedule 8.20 in the timeframes set forth therein.

## SECTION 9 NEGATIVE COVENANTS

The Obligors jointly and severally covenant and agree, for the benefit of the Agent and the Lenders that until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been paid in full in cash:

**9.01 Indebtedness.** The Obligors shall not, and shall not permit any of their Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except for the following:

- (a) the Obligations;
- (b) Indebtedness existing on the Restatement Date (other than the Existing Convertible Notes and the Obligations) and set forth on **Schedule 7.13(a)** and Permitted Refinancings thereof; provided that, in each case, such Indebtedness is subordinated to the Obligations on terms satisfactory to the Agent;
- (c) Indebtedness of an Obligor (other than Cortendo) owing to another Obligor (other than Cortendo); provided that, in each case, such Indebtedness shall be subordinated to the Obligations pursuant to the Intercompany Subordination Agreement;
- (d) (i) Guaranties by an Obligor (other than Cortendo) of the Indebtedness of another Obligor (other than Cortendo) to the extent such Indebtedness is otherwise permitted hereunder and (ii) Guaranties by the Borrower of the Indebtedness of Xeris Australia pursuant to any Letter of Financial Support (in the form set forth on Exhibit A to the Fee Letter or in such other form as is reasonably satisfactory to the Agent) executed and delivered by the Borrower to the Board of Xeris Australia from time to time (a copy of which shall be concurrently provided to the Agent) (a "**Letter of Financial Support**"); provided that in the case of this **clause (ii)** any payments thereon shall be deemed to be an Investment by the Borrower in Xeris Australia to be made in accordance with **Section 9.05(k)**, or, at the Borrower's option, **Section 9.05(r)** and in any event subject to the limitations set forth therein; provided further that, in the case of **clauses (i) and (ii)** above, any subrogation claims of any such guarantying Obligor shall be subordinated to the Obligations pursuant to the Intercompany Subordination Agreement;
- (e) ordinary course of business equipment financing and leasing; provided that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness shall not exceed \$3,000,000 (or the Equivalent Amount in other currencies) at any time;

- (f) Indebtedness under Hedging Agreements permitted by **Section 9.05(e)**;
- (g) Indebtedness assumed pursuant to any Permitted Acquisition; provided that (i) the aggregate amount of Indebtedness permitted pursuant to this **Section 9.01(g)** shall not exceed \$3,000,000 at any time outstanding and (ii) no such Indebtedness shall have been created or incurred in connection with, or in contemplation of, such Permitted Acquisition;
- (h) Indebtedness in respect of any agreement providing for treasury, depository or cash management services, including in connection with any automated clearing house transfers of funds or any similar transfers, netting services, overdraft protections and other cash management and similar arrangements, in each case in the ordinary course of business;
- (i) advances or deposits from customers or vendors received in the ordinary course of business;
- (j) workers' compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations and reclamation and statutory obligations, in each case incurred in the ordinary course of business;
- (k) Indebtedness consisting of deferred obligations to pay insurance premiums solely in respect of insurance policies described in **Section 8.05** insuring assets or businesses of an Obligor (other than Cortendo) that are written or arranged in such Obligor's ordinary course of business and which are payable within one (1) year;
- (l) Indebtedness outstanding under (i) the Existing Convertible Notes in an aggregate principal amount not to exceed \$48,800,000, and (ii) Permitted Convertible Indebtedness (other than Existing Convertible Notes) in an aggregate principal amount not to exceed \$50,000,000; provided that (x) so long as any Existing Convertible Notes remain outstanding 100% of the net proceeds up to \$48,800,000 received in connection with any issuance of other Permitted Convertible Indebtedness shall be deposited and held in a Controlled Account for use as Subject Cash as contemplated pursuant to **Section 8.19** and (y) once all Relevant Existing Convertible Notes have been redeemed, repurchased, exchanged and/or refinanced pursuant to **clauses (f) or (i) of Section 9.06**, the maximum aggregate principal amount of Permitted Convertible Indebtedness shall not exceed \$50,000,000 at any time outstanding;
- (m) [reserved];
- (n) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the ordinary course of business;
- (o) credit card Indebtedness in an outstanding principal amount not to exceed at any time \$1,000,000 in the aggregate;
- (p) Indebtedness under any letters of credit in an aggregate face amount not to exceed \$6,000,000;

(q) Indebtedness incurred under performance, surety, bid, statutory and appeal bonds, completion guarantees and other similar obligations, in each case in the ordinary course of business not to exceed \$2,000,000 in the aggregate at any time outstanding;

(r) Indebtedness of Xeris Australia or Cortendo owing to an Obligor (other than Cortendo) pursuant to Investments permitted pursuant to **Section 9.05(k)**;

(s) other Indebtedness not otherwise permitted hereunder not to exceed \$4,000,000 in the aggregate at any time outstanding;

(t) Permitted Refinancings of Indebtedness otherwise permitted pursuant to this **Section 9.1** (other than **Sections 9.1(a), (d), (l), (p), (t)** and **(u)**); provided that, for the avoidance of doubt, the consummation of Permitted Refinancings permitted by this **clause (t)** shall not result in Permitted Indebtedness described in this **Section 9.1** (other than **Sections 9.1(a), (d), (l), (p), (t)** and **(u)**) being reallocated to this **clause (t)** or otherwise provide for additional capacity for Permitted Indebtedness under the current dollar-based baskets; and

(u) to the extent constituting Indebtedness, obligations of Parent under the CVR.

Any term or provision of this Agreement to the contrary notwithstanding, in no event shall Cortendo or any Subsidiary that is not a Subsidiary Guarantor incur or permit to remain outstanding Indebtedness from any Obligor (other than pursuant to **clauses (b), (d)(ii)** or **(r)** above).

**9.02 Liens.** The Obligors shall not, and shall not permit any of their Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now or in the future owned by it or such Subsidiary, except for the following:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of any Obligor or any of its Subsidiaries existing on the Restatement Date and set forth on **Schedule 7.13(c)**; provided that (i) no such Lien shall extend to any other property or asset of any Obligor or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the Restatement Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) Liens securing Indebtedness permitted under **Section 9.01(e)** (including any Permitted Refinancings thereof); provided that such Liens are restricted solely to the collateral permitted to be secured pursuant to **Section 9.01(e)**;

(d) Liens imposed by any applicable Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's, lessor's and mechanics' liens and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof in the operations of the business of any Obligor or any of its Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of

preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

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

(f) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required GAAP shall have been made;

(g) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any applicable Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligor or any of their Subsidiaries;

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to applicable Law; (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any applicable Law, which, in the aggregate for **clauses (i), (ii) and (iii)** above, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligor or their Subsidiaries; and (iv) leases or subleases in the ordinary course of business;

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

(j) bankers' liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business;

(k) (i) licenses permitted pursuant to **Section 9.18** and (ii) any ordinary course interest or title of a licensor, sublicensor, collaborator, lessor or sublessor with respect to any assets under any inbound license, collaboration agreement or lease agreement permitted pursuant to **Section 9.18**;

(l) cash collateral accounts serving as collateral in connection with Indebtedness permitted pursuant to **Section 9.01(p)** in an amount up to 105% of such Indebtedness;

(m) [reserved];

(n) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 11.01(i)**;

(o) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition;

(p) Liens in favor of customs and revenue authorities arising as a matter of Law which secure payment of customs duties in connection with the importations of goods in the ordinary course of business;

(q) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases for personal property entered into in the ordinary course of business;

(r) pledges or deposits made in the ordinary course of business in connection with obligations in respect of (i) surety or appeal bonds, bid or performance bonds, or other obligations of a like nature to the extent permitted pursuant to **Section 9.01(q)** and (ii) leases in the ordinary course of business;

(s) Liens not otherwise permitted hereunder securing Indebtedness permitted pursuant to **Section 9.01(s)**; and

(t) cash collateral accounts serving as collateral in connection with Indebtedness permitted pursuant to **Section 9.01(o)** in an amount up to 105% of such Indebtedness.

Any term or provision of this Agreement to the contrary notwithstanding no Lien otherwise permitted under any of the foregoing **clauses (b) through (t)** (other than pursuant to **clause (m)** above and other non-consensual Permitted Liens) shall apply to any Material Intellectual Property or any Equity Interests of any Person that owns Material Intellectual Property.

**9.03 Fundamental Changes, Acquisitions, Etc.** The Obligors shall not, and shall not permit any of their Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any Disqualified Equity Interests or (iv) other than Permitted Acquisitions, make any Acquisition or otherwise acquire any business or all or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except for the following (in each case so long as no Event of Default has occurred and is continuing and no Event of Default would reasonably be expected to result therefrom):

(a) the merger, amalgamation or consolidation of any Subsidiary with or into any other Obligor (other than Cortendo and any Subsidiary that is required to become a Subsidiary Guarantor but has not yet done so within the time periods set forth in **Section 8.12(a)**); provided that Parent and the Borrower shall not merge, amalgamate or consolidate with or into one another, and with respect to any other such transaction involving Parent or the Borrower, Parent or the Borrower, as applicable must be the surviving or successor entity of such transaction and with respect to any transaction involving any other Obligor and a Subsidiary that is not an Obligor, the Obligor must be the surviving or successor entity of such transaction;

(b) (i) the merger between any Foreign Subsidiary and any other Obligor or the solvent liquidation or dissolution of any Foreign Subsidiary and (ii) the merger between any Immaterial Subsidiary and any other Obligor or the solvent liquidation or dissolution of any Immaterial Subsidiary (any such merger, liquidation, or dissolution, a “*Permitted Wind-Up*”); provided that, in each case, the Obligors shall ensure that the Agent has at all times a perfected Lien on all Equity Interests in Strongbridge Dublin Limited; provided further that Parent and the Borrower shall not merge, amalgamate or consolidate with or into one another, and with respect to any other such transaction involving Parent or the Borrower, Parent or the Borrower, as applicable must be the surviving or successor entity of such transaction and with respect to any transaction involving any other Obligor and a Subsidiary that is not an Obligor, an Obligor must be the surviving or successor entity of such transaction;

(c) the sale, lease, transfer or other disposition by any Subsidiary (other than the Borrower) of any or all of its property (upon voluntary liquidation or otherwise) to any Obligor (other than Cortendo and any Subsidiary that is required to become a Subsidiary Guarantor but has not yet done so within the time periods set forth in **Section 8.12(a)**);

(d) the sale, transfer or other disposition of the Equity Interests of any Subsidiary (other than the Borrower) to any Obligor (other than Cortendo and any Person that is required to become a Subsidiary Guarantor but has not yet done so within the time periods set forth in **Section 8.12(a)**);

(e) transactions permitted by **Section 9.05**;

(f) the creation of any Subsidiary in compliance with **Section 8.12**; and

(g) the sale, lease, transfer or other disposition by any Subsidiary that is not an Obligor of any or all of its property (upon voluntary liquidation or otherwise) to an Obligor (other than Cortendo).

**9.04 Lines of Business.** The Obligors shall not, and shall not permit any of their Subsidiaries to, engage in any business other than the business engaged in on the Restatement Date by such Persons or a similar, corollary, ancillary, incidental, complementary or related line of business, or a reasonable extension, development or expansion thereof.

**9.05 Investments.** The Obligors shall not, and shall not permit any of their Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except for the following:

(a) Investments outstanding on the Restatement Date and identified on **Schedule 9.05** and any modification, replacement, renewal or extension thereof to the extent not involving new or additional Investments or otherwise increasing the amount thereof;

(b) operating Deposit Accounts, Securities Accounts or Commodity Accounts with banks or financial institutions that are Controlled Accounts or Excluded Accounts;

- (c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business and prepaid royalties in the ordinary course of business;
- (d) Permitted Cash Equivalent Investments in Controlled Accounts;
- (e) Hedging Agreements entered into in any Obligor's or any of its Subsidiaries' ordinary course of business (but excluding Cortendo) for the purpose of hedging currency risks or interest rate risks (but not for speculative purposes); provided that (i) the aggregate notional amount for all such Hedging Agreements shall not exceed \$3,000,000 (or the Equivalent Amount in other currencies) and (ii) no such Hedging Agreement shall be permitted to be entered into pursuant to this **clause (e)** until Parent's Board has adopted a written investment policy that is reasonably satisfactory to the Agent;
- (f) Investments consisting of security deposits with utilities and landlords to secure office space and other like Persons made in the ordinary course of business;
- (g) employee loans, travel advances and guarantees in accordance with Parent's usual and customary practices with respect thereto (if permitted by applicable Law) which in the aggregate shall not exceed \$3,000,000 outstanding at any time (or the Equivalent Amount in other currencies);
- (h) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;
- (i) Investments in the form of Indebtedness owing by an Obligor or any of its Subsidiaries to another Obligor to the extent such Indebtedness is permitted pursuant to **Section 9.01** (including any Permitted Refinancings thereof);
- (j) Permitted Acquisitions;
- (k) cash Investments in (i) Xeris Australia not to exceed \$2,000,000 in the aggregate in any fiscal year solely for the purpose of administrative expenses and funding research and development costs of Xeris Australia, (ii) Cortendo not to exceed \$100,000 in the aggregate in any fiscal year, and (iii) any other Foreign Subsidiary in an amount not to exceed \$1,000,000 in the aggregate for all such other Foreign Subsidiaries in any fiscal year;
- (l) (i) Investments by an Obligor in any other Obligor (other than Cortendo) and (ii) Investments by Cortendo or any Subsidiary that is not an Obligor in an Obligor (other than Cortendo) in the form of Subordinated Indebtedness;
- (m) (i) loans to employees, officers or directors relating to the purchase of equity securities of Parent or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Parent's Board and (ii) non-cash loans to employees, officers or directors relating to the exercise of options to purchase equity securities of Parent or its Subsidiaries which, in each case, in the aggregate of **clauses (i)** and **(ii)** together shall not exceed \$500,000 outstanding at any time;

(n) Investments of any Person existing at the time such Person becomes a Subsidiary of the Borrower or consolidates or merges with the Borrower or any Subsidiary, in each case, so long as (i) such Person becomes a Subsidiary pursuant to a Permitted Acquisition or such consolidation or merger, as the case may be, is permitted pursuant hereto, (ii) such Person becomes a Subsidiary Guarantor pursuant to **Section 8.12** and (iii) such Investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

(o) Non-cash Investments in joint ventures or strategic alliances in the ordinary course of the Borrower's business consisting of the licensing of technology, the development of technology or the providing of technical support in an aggregate amount at any time outstanding not to exceed \$3,000,000;

(p) Cash Investments in small partner companies in connection with product development projects and investments in joint ventures and other strategic alliances in an aggregate amount at any time outstanding not to exceed \$500,000;

(q) Investments consisting of payments of the cost of the formation of and maintenance of Subsidiaries so long as such Subsidiaries comply with **Section 8.12** and the aggregate amount of such Investments at any time outstanding does not exceed \$1,000,000;

(r) So long as no Event of Default has occurred and is continuing or would reasonably be expected to result therefrom, Investments not otherwise permitted hereunder in an aggregate amount not to exceed \$3,000,000 at any time outstanding;

(s) Investments by the Borrower in Xeris Australia in the form of a Letter of Financial Support permitted pursuant to **Section 9.01(d)(ii)**; provided that any payments thereon shall be made in accordance with **Section 9.05(k)**, or, at the Borrower's option, **Section 9.05(r)** and in any event subject to the limitations set forth therein; and

(t) Investments by any Obligor in Foreign Subsidiaries in connection with any costs and expenses incurred in connection with any Permitted Wind-Up (and not payment of outstanding Indebtedness) in an aggregate amount for all such Foreign Subsidiaries not to exceed \$5,000,000.

Any term or provision of this Agreement to the contrary notwithstanding, in no event shall any Obligor make, directly or indirectly, or permit to remain outstanding any Investments in Cortendo or any Subsidiary that is not a Subsidiary Guarantor (other than pursuant to **clause (k)** or **(r)** above).

**9.06 Restricted Payments.** The Obligors shall not, and shall not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment or to make any payments (whether of interest or principal, voluntary or mandatory, a prepayment or repayment, repurchase or redemption or any other payment) in respect of Existing Convertible Notes or any Permitted Convertible Indebtedness, except:

(a) non-cash dividends with respect to Parent's Equity Interests payable solely in shares of its Qualified Equity Interests so long as no Event of Default has occurred and is continuing or would reasonably be expected to occur or result therefrom;



(b) dividends paid by (i) any Subsidiary of any Obligor to any Obligor (other than Cortendo) or any Person that is required to become a Subsidiary Guarantor but has not yet done so within the time periods set forth in **Section 8.12(a)**) or (ii) any Subsidiary of any Obligor that is not an Obligor to any other Subsidiary of any Obligor that is not an Obligor;

(c) upon the death, incapacity or termination of any present or former officer or employee that is a holder of Qualified Equity Interests of Parent or the exercise of a right of first refusal or similar right in respect of any such holder, Parent may repurchase such Qualified Equity Interests of such holder or such holder's family, trusts, estates and heirs pursuant to stock repurchase agreements in an amount not to exceed \$3,000,000 per fiscal year so long as no Event of Default has occurred and is continuing or would reasonably be expected to occur or result therefrom;

(d) the payment by any Obligor or any of its Subsidiaries of cash in lieu of the issuance of fractional shares made to redeem, purchase, repurchase, or retire its obligations under any warrants issued by it in accordance with the terms thereof;

(e) the repurchase or other acquisition of Qualified Equity Interests of Parent deemed to occur (i) upon the exercise of stock options, warrants, restricted stock units or other rights to purchase Qualified Equity Interests of Parent if such Equity Interests represent a portion of the exercise price thereof or conversion price thereof and (ii) in connection with any tax withholding required upon the grant of or any exercise or vesting of any Qualified Equity Interests of Parent (or options in respect thereof);

(f) (i) redemptions, repurchases, exchanges, retirements or refinancings (including refinancing via exchange, offerings (or re-offerings), or any other similar or customary method) of Existing Convertible Notes (in whole or in part); provided that (A) each such transaction is made only with Subject Cash, or Qualified Equity Interests of Parent (or proceeds of one or more issuances of Qualified Equity Interests of Parent) or Permitted Convertible Indebtedness (or proceeds from one or more issuance of Permitted Convertible Indebtedness), or a combination thereof, or in respect of the Existing 2025 Convertible Notes only, either proceeds of the Tranche 2 Loan or Subject Cash, (B) as of the date of any such redemption, repurchase, exchange or refinancing (other than to the extent made with Non-Balance Sheet Cash Proceeds), no Event of Default has occurred and is continuing or would result therefrom, and (C) both immediately before and after giving effect to such redemption, repurchase, exchange, retirement or refinancing, the Obligors are and will be in compliance with the financial covenants set forth in **Section 10**; (ii) payments of interest in respect of the Existing Convertible Notes in accordance with their terms in effect on the Restatement Date and any other Permitted Convertible Indebtedness in accordance with its terms so long as no Event of Default occurred and is continuing or would result therefrom; and (iii) issuance of new shares of Parent's Qualified Equity Interests (and cash in lieu of any fractional Qualified Equity Interests) to consummate the conversion of the Existing Convertible Notes or other Permitted Convertible Indebtedness upon the satisfaction of the conditions set forth therein to such conversion or if such shares (and cash in lieu of fractional Qualified Equity Interests) are used to repurchase the Existing Convertible Notes or other Permitted Convertible Indebtedness so long as no Change of Control would result therefrom;

- (g) the payment by any Obligor or any of its Subsidiaries of Permitted Tax Distributions;
- (h) cash in lieu of the issuance of fractional shares not to exceed \$250,000 per fiscal year;
- (i) Parent may effect a conversion or exchange of the Existing Convertible Notes or other Permitted Convertible Indebtedness into Qualified Equity Interests of Parent (and cash in lieu of fractional Qualified Equity Interests) in accordance with the terms thereof and may deliver such Qualified Equity Interests to holders of the Existing Convertible Notes or other Permitted Convertible Indebtedness to induce such holders to convert the Existing Convertible Notes or other Permitted Convertible Indebtedness in accordance with the terms thereof;
- (j) Parent may honor any non-cash (or, in the case of fractional shares, cash) conversion or exercise requests in respect of any convertible securities, options, or warrants of Parent into Qualified Equity Interests of Parent pursuant to the terms of such convertible securities, options or warrants or otherwise in exchange therefor;
- (k) Restricted Payments not otherwise permitted hereunder in an aggregate amount not to exceed \$3,000,000 since the Restatement Date so long as no Event of Default has occurred and is continuing or would reasonably be expected to occur or result therefrom; and
- (l) Issuances of Qualified Equity Interests of Parent to satisfy Parent's obligations under the CVR in accordance with the terms thereof (or payments of cash in lieu of fractional shares).

**9.07 Payments of Subordinated Indebtedness.** The Obligors shall not, and shall not permit any of their Subsidiaries to, make any payments (whether voluntary or mandatory, a prepayment or repayment, repurchase or redemption) in respect of any Subordinated Indebtedness other than, (a) subject to the terms of the applicable subordination or similar agreement in favor of (or entered into for the benefit of) the Agent or the Lenders, scheduled payments (including, without limitation, associated fees and costs) of such Subordinated Indebtedness to the extent payment is permitted pursuant to the terms of the applicable subordination or similar agreement, (b) payments to an Obligor (other than Cortendo) in connection with the settlement of any intercompany Indebtedness in connection with a Permitted Wind-Up, and (c) payments made by an Obligor in connection with the settlement of any intercompany Indebtedness in connection with a Permitted Wind-Up in an aggregate amount not to exceed \$1,000,000 for all such payments by the Obligors in connection with all Permitted Wind-Ups.

**9.08 Change in Fiscal Year.** The Obligors shall not, and shall not permit any of their Subsidiaries to, change the last day of their fiscal year from that in effect on the Restatement Date, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Obligors or as otherwise required by Law.

**9.09 Sales of Assets, Etc.** The Obligors shall not, and shall not permit any of their Subsidiaries to sell, lease, transfer, or otherwise dispose of any of their assets or properties (including accounts receivable, Intellectual Property or Equity Interests of Subsidiaries), forgive, release or compromise any amount owed to any Obligor or any such Subsidiary, in each case, in

one transaction or series of transactions (any thereof, an “*Asset Sale*”), except for the following (provided that, in the case of any Asset Sale of the type described in **clauses (c) or (i)** below, the Obligors shall not, and shall not permit any of their Subsidiaries to, allow any such Asset Sale to occur if any Event of Default has occurred and is continuing or would reasonably be expected to occur as a result of such Asset Sale):

- (a) sales of inventory in the ordinary course of its business on ordinary business terms;
- (b) the forgiveness, release or compromise of any amount owed to an Obligor or any of its Subsidiaries in the ordinary course of business;
- (c) transfers of assets or properties (other than any Material Intellectual Property) by any by any Obligor or any of its Subsidiaries to another Obligor (other than Cortendo and any Person that is required to become a Subsidiary Guarantor but has not yet done so within the time periods set forth in **Section 8.12(a)**);
- (d) dispositions of any asset or properties (including leaseholders, but other than any Material Intellectual Property) that is obsolete or worn out or no longer used or useful in the Business;
- (e) as expressly permitted under **Sections 9.03 or 9.05**;
- (f) the use of cash and Permitted Cash Equivalent Investments in the ordinary course of business or in connection with other business activities not prohibited or otherwise restricted hereby or by any other Loan Document;
- (g) dispositions consisting of the sale, transfer, assignment or other disposition of unpaid and overdue accounts receivable in connection with the collection, compromise or settlement thereof;
- (h) dispositions of any asset or property (other than Material Intellectual Property) to the extent that such asset or property is exchanged for credit against the purchase price of similar replacement property;
- (i) any license of Intellectual Property to the extent permitted by **Section 9.18**;
- (j) any Casualty Event that would constitute an Asset Sale;
- (k) the lapse or abandonment of any registrations or applications for registration of any Intellectual Property (other than Material Intellectual Property) no longer used or useful in the conduct of the business of the Obligors or their Subsidiaries to the extent no longer economically desirable in the conduct of their business;
- (l) the sale of Qualified Equity Interests of Parent (to the extent not resulting in a Change of Control or other Event of Default); and

(m) other Asset Sales not otherwise permitted hereunder not to exceed \$1,000,000 in the aggregate since the Restatement Date.

**9.10 Transactions with Affiliates.** The Obligors shall not, and shall not permit any of their Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(a) transactions between or among Obligors and their Subsidiaries (other than any Subsidiary that is required to become a Subsidiary Guarantor but has not yet done so within the time periods set forth in **Section 8.12(a)**);

(b) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of Parent or any of its Subsidiaries in the ordinary course of business; and

(c) any other transaction of any Obligor or any of its Subsidiaries that is (i) on fair and reasonable terms that are no less favorable (including with respect to the amount of cash or other consideration receivable or payable in connection therewith ) to such Obligor or such Subsidiary, as applicable, than it could obtain in an arm's-length transaction with a Person that is not an Affiliate of such Obligor or such Subsidiary, and (ii) of the kind which would be entered into by a prudent Person in the position of such Obligor or such Subsidiary, as applicable, with another Person that is not an Affiliate of such Obligor or such Subsidiary, as applicable.

**9.11 Restrictive Agreements.** The Obligors shall not, and shall not permit any of their Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents and (ii) Restrictive Agreements listed on **Schedule 7.15**.

**9.12 Modifications and Terminations of Material Agreements and Organic Documents.** The Obligors shall not, and shall not permit any of their Subsidiaries to:

(a) waive, amend, modify, terminate, replace or otherwise modify any term or provision of any Organic Document in any manner adverse to the interests of the Agent or to the Lenders in their capacities as such;

(b) (i) take or omit to take any action that results in the termination of, or permits any other Person to terminate, any Material Agreement or Material Intellectual Property, or (ii) waive, amend, terminate, replace or otherwise modify any term or provision of any Material Agreement in any manner materially adverse to the interests of the Secured Parties in their capacities as such; or

(c) waive, amend or modify the terms of the Existing Convertible Notes or other Permitted Convertible Indebtedness if such amendment or modification (i) is adverse to the interests of the Lenders (including, without limitation, any amendment or modification that would shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled, or increase the interest rate applicable thereto) or (ii) would

otherwise cause such terms to fail to satisfy the qualifications set forth in the definition of “Permitted Convertible Indebtedness”.

**9.13 Sales and Leasebacks.** Except as disclosed on **Schedule 9.13**, the Obligors shall not, and shall not permit any of their Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any asset or property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to sell or transfer to any other Person and (ii) which such Person intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

**9.14 Hazardous Material.** The Obligors shall not, and shall not permit any of their Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**9.15 Accounting Changes.** The Obligors shall not, and shall not permit any of their Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

**9.16 [Reserved].**

**9.17 Sanctions; Anti-Corruption Use of Proceeds.** The Borrower shall not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (B) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as Agent, Lender, underwriter, advisor, investor, or otherwise).

**9.18 Inbound and Outbound Licenses.**

(a) **Inbound Licenses.** The Obligors shall not, and shall not permit any of their Subsidiaries to, enter into or become or remain bound by any inbound license agreement requiring any Obligor or any of its Subsidiaries, as the case may be, during any twelve (12) month period during the term of such license agreement, to make aggregate payments in excess of \$2,000,000 in respect of such inbound license unless the Borrower has (i) provided prior written notice to the Agent of the material terms of such license or agreement with a description of its anticipated and projected impact on the Borrower’s or such Subsidiary’s, as applicable, business or financial condition and (ii) taken such commercially reasonable actions as the Agent may reasonably request to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for the Agent and the Lenders to be granted a valid and perfected Lien on such license agreement and the right to fully exercise its rights under any of the Loan Documents in the event of a disposition or liquidation (including in connection with a foreclosure) of the

rights, assets or properties that are the subject of such license agreement; provided that inbound license agreements in the nature of over the counter or “shrink wrap” software that are commercially available to the public shall not be prohibited by this **clause (a)**.

(b) **Outbound Licenses.** With respect to any outbound license of Material Intellectual Property, including any collaboration or development agreement of Material Intellectual Property (a “**Subject Outbound License**”), the Obligors shall not, and shall not permit any of their Subsidiaries to, enter into or become or remain bound by any such Subject Outbound License unless: (i) such Subject Outbound License has been entered into on an arm’s-length basis, on commercially reasonable terms and in the ordinary course of business, (ii) such Subject Outbound License has not resulted in, and does not provide the licensee with any right to cause, a legal transfer of title to the licensee thereunder or any other Person of the Material Intellectual Property that is the subject of such Subject Outbound License and (iii) with respect to any Material IP Collateral that is the subject of such Subject Outbound License, the terms of such Subject Outbound License will not materially prevent or impair the ability of the Agent or the Lenders from fully exercising their collateral and security rights in such Material IP Collateral provided for under any of the Loan Documents in the event of a liquidation, foreclosure or other exercise of remedies (it being acknowledged and agreed that any ability for a licensee to terminate such Subject Outbound License shall not be deemed to violate this **clause (iii)**); provided that in no event shall any Subject Outbound License entered into after the Restatement Date in respect of the Products known as Gvoke, Keveyis and Recorlev in the United States be permitted without the prior written consent of the Agent.

**9.19 Take-Or-Pay Agreements.** The Obligors shall not, and shall not permit any of their Subsidiaries to, enter into any agreements to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement, other than operating leases entered into in the ordinary course of business and any such license or other agreement for the purchase of goods, software and other intangibles, services or supplies in the ordinary course of business.

## **SECTION 10 FINANCIAL COVENANTS**

**10.01 Minimum Liquidity.** The Borrower shall at all times maintain a minimum aggregate balance of twenty million dollars (\$20,000,000) in cash in one or more Controlled Accounts maintained with one or more commercial banks or similar deposit-taking institutions in the U.S. that are free and clear of all Liens, other than Liens granted under the Loan Documents in favor of the Secured Parties; provided that in no event shall Subject Cash be included in the calculation of such cash pursuant to this **Section 10.01**.

**10.02 Minimum Revenue.** As of the last day of each fiscal quarter set forth below, the Obligors shall have received Revenue in the ordinary course of business, for the twelve (12) month consecutive period ending on the last day of such fiscal quarter, in an aggregate amount not less than the corresponding amount set forth opposite such fiscal quarter:

<b><u>Fiscal Quarter Ending</u></b>	<b><u>Revenue</u></b>
March 31, 2024	\$110,000,000
June 30, 2024	\$125,000,000
September 30, 2024	\$150,000,000
December 31, 2024	\$150,000,000
March 31, 2025	\$150,000,000
June 30, 2025	\$150,000,000
September 30, 2025	\$150,000,000
December 31, 2025	\$150,000,000
March 31, 2026	\$150,000,000
June 30, 2026	\$150,000,000
September 30, 2026	\$150,000,000
December 31, 2026	\$150,000,000
March 31, 2027 and each fiscal quarter thereafter	\$150,000,000

## **SECTION 11 EVENTS OF DEFAULT**

**11.01 Events of Default.** Each of the following events shall constitute an “*Event of Default*”:

- (a) **Principal or Interest Payment Default.** The Borrower shall fail to pay any principal of or interest on the Loans, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.
- (b) **Other Payment Defaults.** Any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.
- (c) **Representations and Warranties.** Any representation or warranty made or deemed made by or on behalf of any Obligor or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or

modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Sections 8.01(a), 8.01(b), 8.01(c), 8.0(d), 8.01(e), 8.02(a), 8.02(c), 8.02(n), 8.02(o), 8.02(m), 8.03** (with respect to the Borrower's existence), **8.11, 8.12, or 8.17, 8.19, 8.20, Section 9 or Section 10.**

(e) **Other Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a), 11.01(b) or 11.01(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

(f) **Payment Default on Other Indebtedness.** Any Obligor or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness.

(g) **Other Defaults on Other Indebtedness.** (i) Any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders or beneficiaries of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (in each case, other than (A) the conversion of Existing Convertible Indebtedness or Permitted Convertible Indebtedness in accordance with its terms or (B) the redemption of the Existing Convertible Indebtedness or any Permitted Convertible Indebtedness permitted to be redeemed by, and in accordance with, this Agreement), or (ii) there occurs under any Hedging Agreement an early termination date (as defined in such Hedging Agreement) resulting from (x) any event of default under such Hedging Agreement as to which Parent or any of its Subsidiaries is the defaulting party (as defined in such Hedging Agreement) and such event of default shall continue unremedied, uncured or unwaived after the expiration of any cure period thereunder or (y) any termination event (as defined in such Hedging Agreement) under such Hedging Agreement as to which Parent or any Subsidiary is an affected party (as defined in such Hedging Agreement) and, in either event, the termination value (if determined in accordance with the Hedging Agreement) or the amount determined as the mark-to-market value (if the termination value has not been so determined) for such affected Hedging Agreement that is owed by Parent or such Subsidiary as a result thereof is greater than the Threshold Amount; *provided* that this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness so long as such Material Indebtedness is repaid in full substantially contemporaneously with such sale or transfer.



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

(i) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (x) liquidation, reorganization or other relief in respect of Parent or any of its Subsidiaries or its debts, or of a substantial part of its assets, under any Debtor Relief Law now or hereafter in effect or (y) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Parent or any of its Subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of 60 or more days or an order or decree approving or ordering any of the foregoing shall be entered;

(ii) Parent or any of its Subsidiaries shall (A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law now or hereafter in effect, (B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in **clause (i)** above, (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Parent or any of its Subsidiaries or for a substantial part of its assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors or (F) take any action for the purpose of effecting any of the foregoing; or

(iii) Parent or any of its Subsidiaries shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(i) **Judgments.** One or more final judgments for the payment of money in an aggregate amount in excess of the Threshold Amount (or the Equivalent Amount in other currencies) (in each case excluding any amounts covered by insurance as to which the applicable carrier has not denied coverage) shall be rendered against Parent or any of its Subsidiaries or any combination thereof and the same shall remain undismissed, unsatisfied or undischarged for a period of forty-five (45) calendar days during which execution shall not be effectively stayed.

(j) **ERISA and Pension Plans.** An ERISA Event shall have occurred that, in the opinion of the Agent, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in liability of Parent and its Subsidiaries in an aggregate amount exceeding the Threshold Amount in the aggregate since the Restatement Date.

(k) **Material Adverse Change, Etc.** A Material Adverse Change, Material Adverse Effect or Material Regulatory Event shall have occurred.

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

(m) **Impairment of Security, Etc.** If any of the following events occurs, and with respect to the following **clause (i)**, other than as a result of the acts or omissions of the Agent or any Lender: (i) the Liens created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on a material portion of the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens), (ii) except for expiration in accordance with its terms or as a result of payment in full, any material portion of the Security Documents, taken as a whole, or of any material Guaranty of any of the Obligations

(including that contained in **Section 13**) shall for whatever reason cease to be in full force and effect, or (iii) other than by reason of payment in full or permitted release in accordance with the terms of the Loan Documents, any Obligor shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document, in each case subject to any limitations following from (i) bankruptcy, insolvency, reorganization, Examinership, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**11.02 Remedies.** Upon the occurrence and during the continuance of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**), and at any time thereafter during the continuance of such event, the Agent may, by notice to the Borrower, declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor; and upon the occurrence of an Event of Default described in **Section 11.01(h)**, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, shall automatically become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

**11.03 Additional Remedies.** Upon the occurrence and during the continuance of any Event of Default, if Parent or any of its Subsidiaries shall be in uncured default under a Material Agreement, the Agent or the Lenders shall have the right (but not the obligation) to cause the default or defaults under such Material Agreement to be remedied (including without limitation by paying any unpaid amount thereunder) and otherwise exercise any and all rights of Parent or such Subsidiary, as the case may be, thereunder, as may be necessary to prevent or cure any default. Without limiting the foregoing, upon any such default, Parent and each of its Subsidiaries shall promptly execute, acknowledge and deliver to the Agent such instruments as may reasonably be required of Parent or such Subsidiary to permit the Agent and the Lenders to cure any default under the applicable Material Agreement or permit the Agent and the Lenders to take such other action required to enable the Agent and the Lenders to cure or remedy the matter in default and preserve the interests of the Agent or Lenders. Any amounts paid by the Agent or Lenders pursuant to this **Section 11.03** shall be payable on demand by Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "**Obligations.**"

## **SECTION 12 THE AGENT**

**12.01 Appointment and Duties.** Subject in all cases to **clause (c)** below:

(a) **Appointment of the Agent.** Each of the Lenders hereby irrevocably appoints Hayfin Services LLP (together with any successor the Agent pursuant to **Section 12.09**) as the administrative agent hereunder and authorizes the Agent to (i) execute and deliver the Loan

Documents and accept delivery thereof on its behalf from Parent or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) **Duties as Collateral and Disbursing Agent.** Without limiting the generality of **Section 12.01(a)**, the Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by any Obligor with, and cash and Permitted Cash Equivalent Investments held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties.** The Lenders and the Obligors hereby each acknowledge and agree that the Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09**, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature and do not (and are not intended to) create any fiduciary obligations, notwithstanding the use of the defined term “the Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document to refer to the Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan

Document (fiduciary or otherwise), and each Lender hereby waives and agrees not to assert any claim against the Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**.

**12.02 Binding Effect.** Each Lender agrees that (i) any action taken by the Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

**12.03 Use of Discretion.**

(a) **No Action without Instructions.** The Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions.** Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12**, the Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Agent or any Related Parties thereof or (ii) that is, in the opinion of the Agent, in its sole and absolute discretion, contrary to any Loan Document, applicable Law or the best interests of the Agent or any of its Affiliates or Related Parties.

**12.04 Delegation of Rights and Duties.** The Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this **Section 12** to the extent provided by the Agent.

**12.05 Reliance and Liability.**

(a) The Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any document and information and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) Neither the Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender hereby waives and shall not assert any right, claim or cause of action based

thereon, except to the extent of liabilities resulting primarily from the fraudulent conduct or behavior of the Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Majority Lenders or for the actions or omissions of any of their Related Parties selected with reasonable care (other than employees, officers and directors of the Agent, when acting on behalf of the Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Parent, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender hereby waives and agrees not to assert any right, claim or cause of action it might have against the Agent based thereon.

**12.06 Agent Individually.** The Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting as the Agent and may receive separate fees and other payments therefor. To the extent the Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Majority Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

**12.07 Lender Credit Decision.** Each Lender acknowledges that it has, independently and without reliance upon the Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of each Obligor and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

**12.08 Expenses; Indemnities.**

(a) Each Lender agrees to reimburse the Agent and each of its Related Parties (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by the Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Agent and each of its Related Parties (to the extent not reimbursed by any Obligor), from and against such Lender's aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Agent or any of its Related Parties in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such Loan Document, or, in each case, any action taken or omitted to be taken by the Agent or any of its Related Parties under or with respect to any of the foregoing; provided that no Lender shall be liable to the Agent or any of its Related Parties to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Agent or, as the case may be, such Related Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

**12.09 Resignation of the Agent.**

(a) At any time upon not less than thirty (30) Business Days prior written notice, the Agent may resign as the "the Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Agent), effective on the date set forth in such notice, which effective date shall not be less than thirty (30) (or more than sixty (60)) days following delivery of such notice. If the Agent delivers any such notice, the Majority Lenders shall have the right to appoint a successor to the Agent subject to the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), except no such consent shall be required if such successor is a White List Agent; provided that if a successor to the Agent has not been appointed on or before the effectiveness of the resignation of the resigning Agent, then the resigning Agent may, on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor to the Agent subject

to the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), except no such consent shall be required if such successor is a White List Agent.

(b) Effective immediately upon its resignation, (i) the resigning Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Agent until a successor the Agent shall have accepted a valid appointment hereunder, (iii) the resigning Agent and its Related Parties shall no longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Agent was, or because the Agent had been, validly acting as the Agent under the Loan Documents or (y) any continuing duties such resigning Agent continues to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Agent shall take such action as may be reasonably necessary to assign to the successor the Agent its rights as the Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Agent, a successor the Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Agent under the Loan Documents.

**12.10 Release of Collateral or Guarantors.** Each Lender hereby consents to the release and hereby directs the Agent to release the following:

(a) any Subsidiary of Parent from its guaranty of any Obligation of any Obligor if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.12(a)**; and

(b) any Lien held by the Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), and (ii) all of the Collateral and all Obligors, upon (A) termination of the Commitments, (B) payment and satisfaction in full of all Loans and all other Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) that the Agent has been notified in writing are then due and payable, (C) deposit of cash collateral with respect to all contingent Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made), in amounts and on terms and conditions and with parties satisfactory to the Agent and each Indemnified Party that is owed such Obligations, and (D) to the extent requested by the Agent, receipt by the Secured Parties of liability releases from the Obligors, each in form and substance acceptable to the Agent.

Each Lender hereby directs the Agent, and the Agent hereby agrees, upon receipt of reasonable advance notice from Parent, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the Guaranties and Liens when and as directed in this **Section 12.10**.

**12.11 Additional Secured Parties.** The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender so long as, by accepting such benefits, such Secured

Party agrees, as among the Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Agent, shall confirm such agreement in a writing in form and substance acceptable to the Agent) this **Section 12** and the decisions and actions of the Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Proportionate Share or similar concept, (ii) each of the Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

### **SECTION 13 GUARANTEE**

**13.01 The Guarantee.** Parent and the Subsidiary Guarantors hereby jointly and severally guarantee to the Agent and the Lenders, and their successors and assigns, the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans, all fees and other amounts and Obligations from time to time owing to the Agent and the Lenders by the Borrower and each other Obligor under this Agreement or under any other Loan Document, in each case strictly in accordance with the terms hereof and thereof (such obligations being herein collectively called the “*Guaranteed Obligations*”). Parent and the Subsidiary Guarantors hereby further jointly and severally agree that if the Borrower or any other Obligor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, Parent and the Subsidiary Guarantors shall promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same shall be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

**13.02 Obligations Unconditional.** The obligations of Parent and the Subsidiary Guarantors under **Section 13.01** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Parent, the Borrower or any other Subsidiary Guarantor under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by all applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 13.02** that the obligations of Parent and the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following



shall not alter or impair the liability of Parent and the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

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

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

**13.03 Reinstatement.** The obligations of Parent and the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

**13.04 Subrogation.** Parent and the Subsidiary Guarantors hereby jointly and severally agree that, until the payment and satisfaction in full of all Guaranteed Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) and the expiration and termination of the Commitments, but subject to the reinstatement provisions set forth in **Section 13.03**, they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in **Section 13.01**, whether by subrogation or otherwise, against the Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

**13.05 Remedies.** Parent and the Subsidiary Guarantors jointly and severally agree that, as between Parent and the Subsidiary Guarantors, on one hand, and the Agent and the Lenders, on the other hand, the obligations of the Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due

and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by Parent and the Subsidiary Guarantors for purposes of **Section 13.01**.

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

**13.07 Continuing Guarantee.** The guarantee in this **Section 13** is a continuing guarantee, and shall apply to all Guaranteed Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) whenever arising.

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

**13.09 Irish Guarantee Limitations.** Notwithstanding any other provision of the Loan Documents, the guarantee in this Section 13 does not apply to any liability to the extent that it would result in this guarantee constituting (a) unlawful financial assistance within the meaning of Section 82 of the Companies Act 2014 of Ireland or (b) a breach of Section 239 of the Companies Act 2014 of Ireland.

**13.10 Swedish Limitations on Guarantee Obligations.** Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, the obligations and liabilities of Cortendo under this Agreement and the other Loan Documents shall be limited if (and only if) required by an application of the provisions of the Swedish Companies Act (Sw. *Aktiebolagslagen (2005:551)*), as amended (the "*Swedish Companies Act*"), regulating (i) prohibited loans and guarantees (including, but not limited to, prohibited loans and security within the meaning of Chapter 21, Sections 1-3 of the Swedish Companies Act), and (ii) distribution of assets (including profits and dividends and any other form of transfer of value (Sw. *värdeöverföring*) within the meaning of the Swedish Companies Act), and it is understood that the obligations and liabilities of Cortendo for such obligations and liabilities under this Agreement and the other Loan Documents shall apply only to the extent permitted by the abovementioned provisions as applied together with other applicable provisions of the Swedish Companies Act, and the obligations and liabilities of Cortendo under this Agreement and the other Loan Documents shall be limited in accordance herewith.

## SECTION 14 MISCELLANEOUS

**14.01 No Waiver.** No failure on the part of the Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

**14.02 Notices.** All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to Parent, the Borrower, another Obligor, the Agent or any Lender, to its address specified on the signature pages hereto or its Guaranty Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). Notwithstanding anything to the contrary in this Agreement or any other Loan Document, notices, documents, certificates and other deliverables to the Lenders by any Obligor may be made solely to the Agent and the Agent shall promptly deliver such notices, documents, certificates and other deliverables to the Lenders.

### **14.03 Expenses, Indemnification, Etc.**

(a) **Expenses.** Each Obligor, jointly and severally, agrees to pay or reimburse (i) the Agent and the Lenders for all of their reasonable and documented (in reasonable detail) out-of-pocket costs and expenses limited to, in the case of legal counsel, the reasonable and documented (in reasonable detail) charges and disbursements of Morrison & Foerster LLP, lead counsel for the Agent and the Lenders, and one additional local outside counsel in each material jurisdiction or discipline in each case for the Agent and the Lenders in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), and (y) any such costs or expenses incurred after the Restatement Date, including any costs or expenses relating to the negotiation or preparation of any modification, supplement, forbearance, consent or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated), subject solely in the case of **clause (i)(x)** above to any caps agreed between the Obligors and the Agent and the Lenders prior to the date of this Agreement; and (ii) the Agent and the Lenders for all of their out-of-pocket costs and expenses (including the out-of-pocket fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default.

(b) **Exculpation, Indemnification, etc.**

(i) In no event shall any party hereto, any successor, transferee or assignee of any party hereto, or any of their respective Affiliates, directors, officers, employees, attorneys, agents, advisors or controlling parties (each, an “*Exculpated Party*”) have any obligation or responsibility for (and the Obligors jointly and severally waive any claims they may have in respect of) any Loss, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans; provided that, nothing in this **clause (i)** shall relieve any Obligor of any obligation such Obligor may have to indemnify an Indemnified Person, as provided in **clause (ii)** below, against any special, indirect, consequential or punitive damages asserted against such Indemnified Person by a third party. Each party hereto agrees, to the fullest extent permitted by applicable Law, that it will not assert, directly or indirectly, any Claim against any Exculpated Party with respect to any of the foregoing.

(ii) Each Obligor, jointly and severally, hereby indemnifies the Agent, each Lender, each of their respective successors, transferees and assigns and each of their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an “*Indemnified Party*”) from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind (limited to, in the case of legal counsel, the reasonable and documented (in reasonable detail) charges and disbursements of one lead counsel for all Indemnified Parties, together, and one additional local outside counsel in each material jurisdiction or discipline in each case for the Indemnified Parties together and, in the case of actual conflict of interest, one additional such set of applicable counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding (each, a “*Proceeding*”) or the preparation of any defense with respect thereto arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the Transactions or any use made or proposed to be made with the proceeds of the Loans, whether or not such Proceeding is brought by any Obligor, any of its Subsidiaries, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct. This **Section 14.03(b)** shall not apply with respect to Taxes other than any Taxes that represent Losses arising from any non-Tax Claim.

(c) No Obligor shall be liable for any settlement of any Proceeding if the amount of such settlement was effected without such Obligor’s consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with such Obligor’s written consent or if there is a final judgment for the plaintiff in any such Proceeding, each Obligor agrees to, jointly and severally, indemnify and hold harmless each Indemnified Person from and against any and all Loss and related expenses by reason of such settlement or judgment in accordance with the terms of **clause (ii)** above. No Obligor shall, without the prior written consent of the Agent (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened Proceedings in respect of which indemnity could have been sought hereunder by any Indemnified Person unless such settlement

(x) includes an unconditional release of such Indemnified Person in form and substance reasonably satisfactory to the Agent from all liability on Claims that are the subject matter of such Proceedings and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person or any injunctive relief or other non-monetary remedy. Each Obligor acknowledges that any failure to comply with the obligations under the preceding sentence may cause irreparable harm to the Agent and the other Indemnified Persons.

**14.04 Amendments, Etc.** Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document may be modified or supplemented only by an instrument in writing signed by Parent, the Borrower, the Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders directly affected thereby shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or any Commitment of any Lender, reduce the fees payable to any Lender hereunder, reduce interest rates or other amounts payable with respect to the Loans held by any Lender, extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans held by any Lender or extend the repayment dates of the Loans held by any Lender;

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

(iii) amend this **Section 14.04** or the definition of “**Majority Lenders**”; and

(c) if the Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Majority Lenders to the Agent within ten (10) Business Days following receipt of notice thereof.

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

(a) **General.** The provisions of this Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the provisions of

**Section 14.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 14.05(e)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 14.05(h)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 14.05(e)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender.** Any Lender may at any time assign to one or more Eligible Transferees (other than a Disqualified Institution unless an Event of Default under **Section 11.01(a)** or **(h)** has occurred and is continuing) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to any Obligor, any Affiliate of any Obligor, or any employees or directors of any Obligor at any time, and (ii) no such assignment shall be made without the prior written consent of the Agent. Subject to the recording thereof by the Lender pursuant to **Section 14.05(d)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 14.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 14.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 14.05(e)**.

(c) **Amendments to Loan Documents.** Each of the Agent, the Lenders, Parent, and its Subsidiaries agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Agent, the Lenders, Parent, and its Subsidiaries, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 14.05**.

(d) **Register.** The Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest or demonstrable error, and Parent, the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Parent, the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations.** Any Lender may at any time, without the consent of, or notice to, Parent or the Borrower, sell participations to any Eligible Transferee (other than an Disqualified Institution unless an Event of Default under **Section 11.01(a)** or **(h)** has occurred and is continuing) (each, a “**Participant**”) in all or a portion of the Lender’s rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Parent and the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender shall not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender’s Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 14.05(f)**, Parent and the Borrower agree that each Participant shall be entitled to the benefits of **Section 5** (subject to the requirements and limitations therein including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.05(b)**; provided that such Participant agrees to be subject to the provisions of **Section 5.04** as if it were an assignee under **Section 14.05(b)** above. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender.

(f) **Limitations on Rights of Participants.** A Participant shall not be entitled to receive any greater payment under **Sections 5.01** or **5.03** with respect to any participation than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation.

(g) **Participant Register.** Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other Obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans, or its other Obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest or demonstrable error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the

Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(h) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**14.06 Survival.** The obligations of the Obligors under **Sections 5.01, 5.02, 5.03, 14.03, 14.05, 14.06, 14.09, 14.10, 14.11, 14.12, 14.13, 14.14** and the obligations of the Subsidiary Guarantors under **Section 13** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Obligations and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty.

**14.07 Captions.** The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

**14.08 Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. Any signature (including, without limitation, (x) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record and (y) any facsimile or .pdf signature) hereto or the other Loan Documents or to any other certificate, agreement or document related to any Loan Document or the Transactions, and any contract formation or record-keeping, in each case, through electronic means, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

**14.09 Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; provided that Section 5-1401 and 5-1402 of the New York General Obligations Law shall apply.



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

(a) **Submission to Jurisdiction.** Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in New York, New York and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 14.10(a)** is for the benefit of the Agent and the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by any applicable Law, the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process.** Nothing herein shall in any way be deemed to limit the ability of the Agent and the Lenders to serve any process or summons in any manner permitted by any applicable Law.

(c) **Waiver of Venue, Etc.** Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

**14.11 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

**14.12 Waiver of Immunity.** To the extent that any Obligor may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

**14.13 Entire Agreement.** This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND SHALL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY,

COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH THE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

**14.14 Severability.** If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any applicable Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

**14.15 No Fiduciary Relationship.** The Borrower acknowledges that the Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

**14.16 Confidentiality.** The Agent and each Lender agree to keep confidential all information provided to them by or on behalf of any Obligor or Subsidiary pursuant to this Agreement that has not been made publicly available on “EDGAR”, including, without limitation, information of third parties any Obligor or Subsidiary is required to keep confidential, or otherwise designated by such Obligor as non-confidential in accordance with reasonable and customary procedures for handling its own confidential information; provided that nothing herein shall prevent the Agent or any Lender from disclosing any such information (i) to the Agent, any other Lender or, subject to an agreement to comply with the provisions of this **Section 14.16**, any Affiliate of a Lender or any Eligible Transferee or other assignee permitted under **Section 14.05(b)** in connection with an actual or bona fide prospective assignment permitted under **Section 14.05**, (ii) subject to an agreement to comply with the provisions of this Section and the request of the Borrower, to any actual or prospective direct or indirect counterparty to any Hedging Agreement (or any professional advisor to such counterparty), (iii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its “**Related Parties**”) subject to an agreement to comply with the provisions of this **Section 14.16** or other customary professional confidentiality obligations; provided that the applicable Lender shall remain liable hereunder for any breach of this **Section 14.16** by any of its Related Parties, its Affiliates or its Affiliates’ Related Parties, (iv) upon the request or demand of any Governmental Authority or any Regulatory Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any applicable Law; provided, however, that to the extent legally permissible, such party shall give the Borrower prompt written notice of such requirement and shall reasonably cooperate (at Borrower’s sole cost) with Borrower’s attempts to limit any such disclosure, (vi) if required to do so in connection with any litigation or similar proceeding, (vii) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 14.16**), (viii) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender’s investment portfolio in connection with ratings issued with respect to such Lender, (ix) in connection with the exercise of any remedy permitted hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating Parent or any of its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection

with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (xi) to any other party hereto; provided, further that, unless specifically prohibited by applicable law or court order, each Lender shall notify Parent and the Borrower of any request or demand by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information and shall reasonably cooperate (at the Borrower's sole cost) with the Borrower's efforts to limit any such disclosure.

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

**14.18 Early Prepayment Fee.** If the Loans are accelerated or otherwise become due prior to the Scheduled Maturity Date, in each case, as a result of an Event of Default (including upon the occurrence of a Insolvency Proceeding (including the acceleration of claims by operation of Law)), the amount of principal of and premium on the Loans that becomes due and payable shall equal 100% of the principal amount of the Loans plus the Early Prepayment Fee in effect on the date of such acceleration or such other prior due date, as if such acceleration or other occurrence were a voluntary prepayment of the Loans accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to the Scheduled Maturity Date, in each case, in respect of any Event of Default (including upon the occurrence of a Insolvency Proceeding (including the acceleration of claims by operation of Law)), the Early Prepayment Fee applicable with respect to a voluntary prepayment of the Loans will also be due and payable on the date of such acceleration or such other prior due date as though the Loans were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's loss as a result thereof. Any such premium payable above shall be presumed to be the liquidated damages sustained by each Lender and Parent and the Borrower agrees that it is reasonable under the circumstances currently existing. PARENT AND THE BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE EARLY

PREPAYMENT FEE IN CONNECTION WITH ANY SUCH ACCELERATION. Parent and the Borrower expressly agree (to the fullest extent it may effectively do so) that: (i) the Early Prepayment Fee is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (ii) the Early Prepayment Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made; (iii) there has been a course of conduct between the Lenders, Parent and the Borrower giving specific consideration in this transaction for such agreement to pay the Early Prepayment Fee; and (iv) Parent and the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

#### **14.19 Judgment Currency.**

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Obligors in respect of any sum due to the Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Agent of any sum adjudged to be so due in such other currency the Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Agent in Dollars, Parent and the Borrower agree, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Agent in Dollars, the Agent shall remit such excess to Parent and the Borrower.

**14.20 USA PATRIOT Act.** The Agent and the Lenders hereby notify Parent and its Subsidiaries that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*") and the Beneficial Ownership Regulation, they are required to obtain, verify and record information that identifies Parent and its Subsidiaries, which information includes the name and address of Parent and its Subsidiaries and other information that will allow such Person to identify Parent or such Subsidiary in accordance with the Patriot Act and the Beneficial Ownership Regulation.

#### **14.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.**

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

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

## **SECTION 15 AMENDMENT AND RESTATEMENT**

### **15.01 Effect of Amendment and Restatement.**

(a) This Agreement amends and restates the Existing Credit Agreement but does not constitute and, is not intended to create, a novation or accord and satisfaction. All security interests and other Liens granted or conveyed with respect to the Collateral pursuant to the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) shall continue in full force and effect and such Collateral shall constitute Collateral hereunder, and nothing in this Agreement shall be construed to constitute a termination, release or extinguishment of any Lien in favor of the Agent that was in effect immediately prior to the Restatement Date.

(b) In addition to the additional Loan Documents executed and delivered on the Restatement Date pursuant to this Agreement, the guaranties, Liens, security interests, pledges, covenants and agreements set forth in the Loan Documents (as defined in the Existing Credit Agreement) and each of the other collateral security documents entered into in connection with the Existing Credit Agreement are made and granted to secure and support the Obligations under this Agreement.

(c) Each of the parties hereto agrees to cooperate and use commercially reasonable efforts to promptly take, or cause to be taken, all actions and to promptly do, or cause to be done, all things necessary or reasonably proper or advisable to fulfill the amendment and restatement contemplated by this **Section 15**.

**15.02 Non-Extinguishment.** Notwithstanding any term or provision hereof, this Agreement, any other Loan Document or any other document, agreement or instrument delivered in connection therewith, the parties hereto acknowledge, confirm and agree that none of the monetary Obligations of the Borrower in respect of the Existing Term Loans under or in respect of the Existing Credit Agreement or any other Loan Document (as defined in the Existing Credit

Agreement), whether in respect to principal, interest, fees or other amounts, are being prepaid, extinguished, novated, waived, canceled or otherwise satisfied, in whole or in part. Rather, it is the agreement and intention of the parties hereto that all such monetary Obligations of the Borrower in respect of the Existing Term Loans shall remain in full force and effect, except that, upon the occurrence of the Restatement Date, the terms, conditions, rights and remedies with respect to such Obligations of the Borrower shall be governed by this Agreement and the other Loan Documents as in effect on and after the Restatement Date, in each case subject to Restatement Date Conversion. Accordingly, no Prepayment Price (as defined in the Existing Agreement) shall be payable on the Existing Term Loans in connection with the Restatement Date Conversion.

### **15.03 Confirmation; Reaffirmation, Etc..**

(a) Each Obligor hereby acknowledges, consents, confirms, reaffirms and agrees to the modifications made to the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) pursuant to this Agreement and hereby agrees that, upon the occurrence of the Restatement Date, each Loan Document (as defined in the Existing Credit Agreement) to which it is a party is and shall continue to be in full force and effect and the same are hereby ratified in all respects, except as otherwise provided therein or in this Agreement and the other Loan Documents.

(b) In furtherance of the foregoing **Section 15.03(a)**, each Obligor hereby further acknowledges, consents, confirms, reaffirms and agrees that each Note delivered pursuant to the Existing Credit Agreement representing amounts of Loans (as defined in the Existing Credit Agreement) that are, upon the Restatement Date following the Restatement Date Conversion, Tranche 1 Loans, to the extent requested by the Lender holding the Tranche 1 Loans evidenced by such Note, shall be amended and restated, reissued and/or replaced so as to evidence Loans of the Borrower from such Lender outstanding under and pursuant to the Amended and Restated Credit Agreement, in each case (i) subject to surrender of such Existing Note to be so amended and restated, reissued and/or replaced, and (ii) otherwise subject to compliance with **Section 2.03**.

### **15.04 Waivers; Release.**

(a) Each of the Agent and each Lender party hereto that was a Lender under the Existing Credit Agreement, on behalf of themselves and all other Secured Parties under the Existing Credit Agreement hereby agrees that immediately upon the Restatement Date, any Default or Event of Default, or other non-compliance that had occurred and is continuing immediately prior to the Restatement Date under the Existing Credit Agreement or other Loan Documents (as defined in the Existing Credit Agreement) shall be automatically waived; provided that for the avoidance of doubt (after giving effect to such waiver under the Existing Credit Agreement) such waiver does not apply to any term, condition or obligation of any Obligor under this Agreement applicable from and after the Restatement Date; provided further that each Obligor shall remain liable for any and all contingent indemnification and reimbursement obligations under the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) in accordance with the terms of the Existing Credit Agreement.

(b) Each of the Obligors hereby releases, acquits, remises and forever discharges Agent and each Lender and their Affiliates from any and all claims, demands, actions and causes of action, whether at law or in equity, whether known or unknown, which such Obligor has by reason of any manner, cause or things, in each case up to (but excluding upon and after) the Restatement Date with respect to the matters arising out of or with respect to the Existing Credit Agreement and the Loan Documents (as defined in the Existing Credit Agreement) or the obligations of Borrower thereunder.

(c) The waivers and releases set forth in this **Section 15.04** are effective for the purposes set forth herein and shall be limited precisely as written and, other than expressly provided thereby, shall not be deemed to (i) be a consent to any amendment, waiver or modification of any other term or condition of this Agreement or any other Loan Document, or (ii) otherwise prejudice any right or remedy which any party hereto may now have or may have in the future under or in connection with this Agreement or any other Loan Document.

[Signature Pages Follow]

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

BORROWER:

**XERIS PHARMACEUTICALS, INC.**

By     /S/ Steven M. Pieper

Name: Steven M. Pieper

Title: Chief Financial Officer

PARENT:

**XERIS BIOPHARMA HOLDINGS, INC.**

By     /S/ Steven M. Pieper

Name: Steven M. Pieper

Title: Chief Financial Officer

Address for Notices:

Xeris Biopharma Holdings, Inc.  
1375 West Fulton Street, Suite 1300  
Chicago, IL 60607  
Attn: Legal Department  
Email: [legal@xerispharma.com](mailto:legal@xerispharma.com)

With a copy to:

The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
Attn: Kevin Grumberg  
Tel.: +1 212 459 7147  
Email: [KGrumberg@goodwinlaw.com](mailto:KGrumberg@goodwinlaw.com)

[SIGNATURE PAGE TO A&R CREDIT AGREEMENT AND GUARANTY]

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SUBSIDIARY GUARANTORS:

**STRONGBRIDGE BIOPHARMA LIMITED**

By     /S/ Steven M. Pieper

Name: Steven M. Pieper

Title: Director

**STRONGBRIDGE DUBLIN LIMITED**

By     /S/ Steven M. Pieper

Name: Steven M. Pieper

Title: Director

**CORTENDO AB**

By     /S/ Beth P. Hecht

Name: Beth P. Hecht

Title: Board Member

Address for Notices:

Xeris Biopharma Holdings, Inc.

1375 West Fulton Street, Suite 1300

Chicago, IL 60607

Attn: Legal Department

Email: legal@xerispharma.com

With a copy to:

Goodwin Procter LLP

The New York Times Building

620 Eighth Avenue

New York, NY 10018

Attn: Kevin Grumberg

Tel.: +1 212 459 7147

Email: KGrumberg@goodwinlaw.com

[SIGNATURE PAGE TO A&R CREDIT AGREEMENT AND GUARANTY]

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AGENT:

**HAYFIN SERVICES LLP**

By /S/ Nicola O'Regan

Name: Nicola O'Regan

Title: Authorized Signatory

Address for Notices:

One Eagle Place

London, SW1Y 6AF

Email: Andrew.Merrill@hayfin.com

Michael.Tischler@hayfin.com

gc@hayfin.com

Tel: +44 207 074 2900

Attention: Nicola O'Regan, Andrew Merrill,  
Michael Tischler, Legal Team / Loan Operations

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

Morrison & Foerster LLP

250 West 55th Street

New York, NY 10019

Attn: Mark S. Wojciechowski

Tel.: (212) 468-8079

Email: MWojciechowski@mof.com

[SIGNATURE PAGE TO A&R CREDIT AGREEMENT AND GUARANTY]

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LENDERS:

**HAYFIN SOF III LUXCO S.À R.L.**

By /S/ John Molloy /S/Diana Kon Kam King  
Name: John Molloy Diana Kon Kam King  
Title: Manger Manager

**HAYFIN HEALTHCARE OPPORTUNITIES  
LUXCO S.À R.L.**

By /S/ John Molloy /S/Diana Kon Kam King  
Name: John Molloy Diana Kon Kam King  
Title: Manger Manager

**HAYFIN BIG CYPRESS LUXCO S.À R.L.**

By /S/ John Molloy /S/ Emmanuel Mougeolle  
Name: John Molloy Emmanuel Mougeolle  
Title: Manger Manager

**HAYFIN CHIEF LUXCO S.À R.L.**

By /S/ John Molloy /S/Diana Kon Kam King  
Name: John Molloy Diana Kon Kam King  
Title: Manger Manager

[SIGNATURE PAGE TO A&R CREDIT AGREEMENT AND GUARANTY]

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**HAYFIN HOSTPLUS LUXCO S.À R.L.**

By /S/ John Molloy /S/Diana Kon Kam King  
Name: John Molloy Diana Kon Kam King  
Title: Manger Manager

**HAYFIN OPAL 2020 (A) UKCO 2 LIMITED**

By /S/ Jessica Gray  
Name: Jessica Gray  
Title: Director

**HAYFIN OPAL 2020 (B) LP**, acting by its general partner Hayfin Opal 2020 GP Limited

By /S/ Lorna Carroll  
Name: Lorna Carroll  
Title: Director

**HAYFIN HAMILTON LUXCO 2 S.À R.L.**

By /S/ John Molloy /S/Diana Kon Kam King  
Name: John Molloy Diana Kon Kam King  
Title: Manger Manager

**SUNHAY LUXCO S.À R.L.**

By /S/ John Molloy /S/Diana Kon Kam King  
Name: John Molloy Diana Kon Kam King  
Title: Manger Manager

---

**HAYFIN TACTICAL SOLUTIONS FUND  
INVEST LP**, acting by its general partner Hayfin  
Tactical Solutions GP LLC

By       /S/ Dana Behnke

Name: Dana Behnke

Title: Authorized Signatory

**HAYFIN HAMILTON AIV LP**, acting by its  
general partner Hayfin Hamilton AIV GP Limited

By       /S/ Lorna Carroll

Name: Lorna Carroll

Title: Director

**HAYFIN AUS AIV LP - HOSTPLUS SERIES**,  
acting by its general partner Hayfin AUS AIV GP  
LLC, acting by its member Hayfin SOF III AIV GP  
S.à r.l.

By /S/ John Molloy /S/ Emmanuel Mougeolle

Name: John Molloy    Emmanuel Mougeolle

Title: Manger         Manager

---

**HAYFIN HEALTHCARE OPPORTUNITIES  
INVEST LP**, acting by its general partner HF GP  
LLC, acting by its sole member Hayfin Healthcare  
Opportunities Fund GP S.à r.l.

By /S/ Lina Kavoliune      /S/Diana Kon Kam King  
Name: Lina Kavoliune      Diana Kon Kam King  
Title: Manger      Manager

Address for Notices:  
c/o Hayfin Services LLP  
One Eagle Place  
London, SW1Y 6AF  
Email: Andrew.Merrill@hayfin.com  
Michael.Tischler@hayfin.com  
gc@hayfin.com  
Phone: +44 207 074 2900  
Attention: Stephen Bourne, Andrew Merrill,  
Michael Tischler, Legal Team / Loan Operations

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

Morrison & Foerster LLP  
250 West 55th Street  
New York, NY 10019  
Attn: Mark S. Wojciechowski  
Tel.: (212) 468-8079  
Email: MWojciechowski@mofocom

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**Schedule 1  
to Credit Agreement**

COMMITMENTS

TRANCHE 1 LOANS

EXISTING TERM LOANS

<b>Lender</b>	<b>Commitment</b>	<b>Proportionate Share</b>
Hayfin Big Cypress LuxCo S.à r.l.	\$3,440,726.69	2.29%
Hayfin Chief LuxCo S.à r.l.	\$12,217,958.84	8.15%
Hayfin Hamilton LuxCo 2 S.à r.l.	\$19,821,315.17	13.21%
Hayfin Healthcare Opportunities LuxCo S.a.r.l.	\$10,000,000.00	6.67%
Hayfin Hostplus LuxCo S.à r.l.	\$8,177,375.30	5.45%
Hayfin Opal 2020 (A) UKCo 2 Limited	\$8,751,322.77	5.83%
Hayfin Opal 2020 (B) LP	\$6,962,553.70	4.64%
Hayfin SOF III LuxCo S.à r.l.	\$68,068,199.99	45.38%
SunHay LuxCo S.à r.l.	\$12,560,547.55	8.37%
<b>TOTAL</b>	<b>\$150,000,000</b>	<b>100%</b>

RESTATEMENT DATE LOAN

<b>Lender</b>	<b>Commitment</b>	<b>Proportionate Share</b>
Hayfin Chief LuxCo S.à r.l.	\$2,250,829.24	4.50%
Hayfin Healthcare Opportunities LuxCo S.a.r.l.	\$9,969,325.15	19.94%
Hayfin Tactical Solutions Fund Invest LP	\$27,943,011.41	55.89%
Hayfin Hamilton AIV LP	\$7,377,625.65	14.76%
Hayfin AUS AIV LP, acting through the Hostplus series.	\$2,459,208.55	4.92%
<b>TOTAL</b>	<b>\$50,000,000</b>	<b>100%</b>

TRANCHE 2 LOAN

<b>Lender</b>	<b>Commitment</b>	<b>Proportionate Share</b>
Hayfin Chief LuxCo S.à r.l.	\$684,252.09	4.50%
Hayfin Healthcare Opportunities LuxCo S.a.r.l.	\$3,030,674.85	19.94%
Hayfin Tactical Solutions Fund Invest LP	\$8,494,675.47	55.89%
Hayfin Hamilton AIV LP	\$2,242,798.19	14.76%
Hayfin AUS AIV LP – Hostplus Series.	\$747,599.40	4.92%
<b>TOTAL</b>	<b>\$15,200,000</b>	<b>100%</b>





**AMENDMENT  
TO  
STRONGBRIDGE BIOPHARMA PLC  
2017 INDUCEMENT PLAN**

- A. The Strongbridge Biopharma plc 2017 Inducement Plan (the “Plan”) is hereby amended by deleting the first sentence of Section 4(a) and substituting therefore the following:
- “Subject to adjustment as described below, the Company Stock available for Awards under the Plan is 0 (the “Share Pool”)”
- B. The effective date of this Second Amendment shall be February 28, 2024.
- C. Except as amended herein, the Plan is confirmed in all other respects.



**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF  
THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Paul R. Edick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Xeris Biopharma Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2024

By: /s/ Paul R. Edick  
Paul R. Edick  
Chief Executive Officer and Chairman  
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF  
THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Steven M. Pieper, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Xeris Biopharma Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2024

By: /s/ Steven M. Pieper  
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Steven M. Pieper  
Chief Financial Officer  
(Principal Financial Officer and Principal Accounting Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

We, Paul R. Edick and Steven M. Pieper, of Xeris Biopharma Holdings, Inc., certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to the best of our knowledge, that:

1. The quarterly report on Form 10-Q for the quarter ended March 31, 2024 (Periodic Report) to which this statement is an exhibit fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and
2. Information contained in the Periodic Report fairly presents, in all material aspects, the financial condition and results of operations of Xeris Biopharma Holdings, Inc.

Date: May 9, 2024

/s/ Paul R. Edick  
Paul R. Edick  
Chairman and Chief Executive Officer  
(Principal Executive Officer)

/s/ Steven M. Pieper  
Steven M. Pieper  
Chief Financial Officer  
(Principal Financial Officer)