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, 2022

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	**87-1082097**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
180 N. LaSalle Street, Suite 1600 Chicago, Illinois	**60601**
(Address of principal executive offices)	(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:

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

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, 2022, 135,530,756 shares, par value $0.0001 per share, of common stock were outstanding.

Summary of the Material Risks Associated with Our Business

Our business is subject to numerous risks and uncertainties that you should be aware of in evaluating our business. These risks include, but are not limited to, the following:

- Our business may be adversely affected by the ongoing coronavirus pandemic.
- As a company, we have a limited operating history and limited experience commercializing pharmaceutical products and have incurred significant losses since inception. We expect to incur losses over the next few years and may not be able to achieve or sustain revenues or profitability in the future.
- Although we generate revenue from Gvoke, Keveyis, Recorlev and Ogluo, we have not yet generated revenue from any of our current or future product candidates, and may never be profitable.
- We may require additional capital to sustain our business, and this capital may cause dilution to our stockholders and might not be available on terms favorable to us, or at all, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.
- Our business depends entirely on the commercial success of our products and product candidates. Even if approved, our product candidates may not be accepted in the marketplace and our business may be materially harmed.
- If we are unable to establish or do not maintain sufficient marketing, sales and distribution capabilities or enter into agreements with third parties to market, sell and distribute our products on terms acceptable to us, we may not be able to generate product revenue and our business, results of operations, and financial condition will be materially adversely affected.
- Our reliance on third-party suppliers, including single-source suppliers, and a limited number of options for alternate sources for Gvoke, Keveyis, and Recorlev or our product candidates could harm our ability to develop our product candidates or to commercialize Gvoke, Keveyis, Recorlev or any product candidates that are approved.
- Reimbursement decisions by third-party payors and consolidation within the healthcare industry and among competitors more generally may have an adverse effect on pricing and market acceptance. If there is not sufficient reimbursement for our products, it is less likely that they will be widely used and pricing pressure may impact our ability to sell our products at prices necessary to support our current business strategies.
- Clinical failure may occur at any stage of clinical development, and the results of our clinical trials may not support our proposed indications for our product candidates. If our clinical trials fail to demonstrate efficacy and safety to the satisfaction of the FDA or other regulatory authorities, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development of such product candidate.
- Gvoke, Keveyis, Recorlev and our product candidates may have undesirable side effects which may delay or prevent marketing approval, or, if approval is received, require them to include safety warnings, require them to be taken off the market or otherwise limit their sales.
- Our failure to successfully identify, develop and market additional product candidates, or acquire additional product candidates or enter into collaborations or other commercial agreements could impair our ability to grow.
- We operate in a competitive business environment and, if we are unable to compete successfully against our existing or potential competitors, our sales and operating results may be negatively affected and we may not successfully commercialize our products or product candidates, even if approved.
- Our success depends on our ability to protect our intellectual property and proprietary technology, as well as the ability of our collaborators to protect their intellectual property and proprietary technology.
- We may not be able to successfully integrate and combine the businesses of Xeris and Strongbridge following the completion of the Transactions and we may not realize the anticipated benefits from the Transactions.
- Our stock price has been and will likely continue to be volatile, and you may not be able to resell shares of our common stock at or above the price you paid.

The summary risk factors described above should be read together with the text of the full risk factors below in the section entitled “Risk Factors” and the other information set forth in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements and the related notes, as well as in other documents that we file with the U.S. Securities and Exchange Commission. The risks summarized above or described in full below are not the only risks that we face. Additional risks and uncertainties not precisely known to us or that we currently deem to be immaterial may also materially adversely affect our business, financial condition, results of operations and future growth prospects.

XERIS BIOPHARMA HOLDINGS, INC.

Index to Quarterly Report on Form 10-Q
Three Months Ended March 31, 2022

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.

PART I. FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS

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

	March 31, 2022	December 31, 2021
Assets	(unaudited)	
Current assets:		
Cash and cash equivalents	$ 103,771	$ 67,271
Short-term investments	28,377	35,162
Trade accounts receivable, net	23,383	17,456
Inventory	16,872	18,118
Prepaid expenses and other current assets	5,147	4,589
Total current assets	177,550	142,596
Property and equipment, net	6,291	6,627
Goodwill	22,859	22,859
Intangible assets, net	128,739	131,450
Other assets	2,184	829
Total assets	$ 337,623	$ 304,361
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 11,091	$ 8,924
Other accrued liabilities	34,358	49,088
Accrued trade discounts and rebates	14,993	15,041
Accrued returns reserve	5,431	4,000
Other current liabilities	619	1,987
Total current liabilities	66,492	79,040
Long-term debt, net of unamortized debt issuance costs	137,639	88,067
Contingent value rights	25,347	22,531
Supply agreement liability, less current portion	—	5,991
Deferred rent	6,942	6,883
Deferred tax liabilities	4,534	4,942
Other liabilities	214	1,676
Total liabilities	241,168	209,130
Commitments and contingencies (Note 15)		
Stockholders'equity:		
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, 2022 and December 31, 2021, respectively	—	—
Common stock—par value $0.0001, 350,000,000 shares and 350,000,000 shares authorized as of March 31, 2022 and December 31, 2021, respectively; 135,528,195 and 124,873,316 shares issued and outstanding as of March 31, 2022 and December 31, 2021, respectively	14	13
Additional paid in capital	590,331	555,359
Accumulated deficit	(493,824)	(460,110)
Accumulated other comprehensive loss	(66)	(31)
Total stockholders' equity	96,455	95,231
Total liabilities and stockholders' equity	$ 337,623	$ 304,361

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)

	Three Months Ended March 31,	
	2022	**2021**
Product revenue, net	$ 21,910	$ 8,051
Royalty, contract and other revenue	163	144
Total revenue	22,073	8,195
Costs and expenses:		
Cost of goods sold, excluding amortization of intangible assets	6,273	1,826
Research and development	6,250	4,032
Selling, general and administrative	35,913	19,077
Amortization of intangible assets	2,711	—
Total costs and expenses	51,147	24,935
Loss from operations	(29,074)	(16,740)
Other income (expense):		
Interest and other income	68	100
Interest expense	(3,521)	(1,791)
Change in fair value of warrants	1,221	20
Change in fair value of contingent value rights	(2,816)	—
Total other expense	(5,048)	(1,671)
Net loss before benefit from income taxes	(34,122)	(18,411)
Benefit from income taxes	408	—
Net loss	$ (33,714)	$ (18,411)
Other comprehensive loss, net of tax:		
Unrealized (losses) on investments	(35)	(17)
Foreign currency translation adjustments	—	1
Comprehensive loss	$ (33,749)	$ (18,427)
Net loss per common share - basic and diluted	$ (0.25)	$ (0.30)
Weighted average common shares outstanding - basic and diluted	135,032,782	61,245,220

See accompanying notes to condensed consolidated financial statements.

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

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2020	59,611,202	$ 6	$ 371,134	$ 6	$ (337,385)	$ 33,761
Net loss	—	—	—	—	(18,411)	(18,411)
Issuance of common stock upon equity offering	6,553,398	1	26,924	—	—	26,925
Exercise of stock options	20,213	—	32	—	—	32
Vesting of restricted stock units and related repurchases	148,643	—	(365)	—	—	(365)
Stock-based compensation	—	—	2,461	—	—	2,461
Other comprehensive loss	—	—	—	(16)	—	(16)
Balance, March 31, 2021	66,333,456	$ 7	$ 400,186	$ (10)	$ (355,796)	$ 44,387

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2021	124,873,316	$ 13	$ 555,359	$ (31)	$ (460,110)	$ 95,231
Net loss	—	—	—	—	(33,714)	(33,714)
Issuance of common stock and warrants upon equity offering	10,238,908	1	29,999	—	—	30,000
Issuance of warrants related to loan agreement		—	2,080	—	—	2,080
Exercise of stock options	11,228	—	8	—	—	8
Vesting of restricted stock units and related repurchases	404,743	—	(416)	—	—	(416)
Stock-based compensation			3,301	—	—	3,301
Other comprehensive loss	—	—	—	(35)	—	(35)
Balance, March 31, 2022	135,528,195	$ 14	$ 590,331	$ (66)	$ (493,824)	$ 96,455

See accompanying notes to condensed consolidated financial statements.

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

	Three Months Ended March 31,	
	2022	**2021**
Cash flows from operating activities:		
Net loss	$ (33,714)	$ (18,411)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	321	337
Amortization of intangible assets	2,711	—
Amortization of investments	50	154
Amortization of debt issuance costs	219	251
Stock-based compensation	3,301	2,461
Loss on extinguishment of debt	1,323	—
Change in fair value of warrants	(1,221)	(20)
Change in fair value of contingent value rights	2,816	—
Changes in operating assets and liabilities:		
Trade accounts receivable	(5,927)	(2,063)
Prepaid expenses and other current assets	(58)	(15)
Inventory	(157)	(3,482)
Accounts payable	2,168	1,651
Other accrued liabilities	(13,658)	(2,790)
Accrued trade discounts and rebates	(48)	(265)
Accrued returns reserve	1,431	(270)
Deferred rent	59	—
Other	(8,025)	(1,494)
Net cash used in operating activities	(48,409)	(23,956)
Cash flows from investing activities:		
Capital expenditures	16	(429)
Purchases of investments	—	(7,920)
Sales and maturities of investments	6,700	34,650
Net cash provided by investing activities	6,716	26,301
Cash flows from financing activities:		
Proceeds from equity offerings	30,000	27,000
Proceeds from issuance of debt	97,295	—
Repayment of debt	(43,496)	—
Payments of debt issuance costs	(4,360)	—
Payments for loss on extinguishment of debt	(837)	—
Proceeds from exercise of stock awards	8	26
Repurchase of common stock withheld for taxes	(416)	(365)
Net cash provided by financing activities	78,194	26,661
Effect of exchange rate changes on cash and cash equivalents	(1)	—
Increase in cash and cash equivalents	36,500	29,006
Cash and cash equivalents, beginning of period	67,271	37,598
Cash and cash equivalents, end of period	$ 103,771	$ 66,604
Supplemental schedule of cash flow information:		
Cash paid for interest	$ 3,769	$ 2,238
Supplemental schedule of non-cash investing and financing activities:		
Issuance of warrants related to loan agreement	$ 2,080	$ —
Accrued equity offering costs	$ —	$ 56

See accompanying notes to condensed consolidated financial statements.

Note 1. Organization and nature of the business

Nature of business

Xeris Biopharma Holdings, Inc. ("Xeris Biopharma" or the "Company") is a biopharmaceutical company committed to developing and commercializing innovative solutions to enhance the lives of people with life-threatening diseases. The Company's primary focus is on therapies for patient populations in endocrinology, neurology, and gastroenterology. The Company currently has three commercially available products, Gvoke, a ready-to-use liquid glucagon for the treatment of severe hypoglycemia, Keveyis, the first and only U.S. Food and Drug Administration ("FDA") approved therapy for primary periodic paralysis ("PPP"), and Recorlev, approved by the FDA in December 2021 for the treatment of endogenous hypercortisolemia in adult patients with Cushing's Syndrome. The Company also has a pipeline of development programs to extend the current marketed products into new indications and uses or bring new products forward using the proprietary formulation technology platforms, XeriSol™ and XeriJect™.

On October 5, 2021, Xeris Pharmaceuticals, Inc. ("Xeris Pharma") acquired Strongbridge Biopharma plc ("Strongbridge"), a biopharmaceutical company commercializing therapies for rare diseases with significant unmet needs. Immediately following the acquisition and related transactions, both Xeris Pharma and Strongbridge became wholly owned subsidiaries of Xeris Biopharma. The common stock of Xeris Pharma and the ordinary shares of Strongbridge were de-registered after completion of the Transactions (as defined below in Note 3). On October 6, 2021, Xeris Biopharma's common stock, par value $0.0001 per share, commenced trading on the Nasdaq Global Select Market ("Nasdaq") under the ticker symbol "XERS". See "Note 3 – Business combination" for a more detailed description of the Transactions.

As used herein, the "Company" or "Xeris" refers to Xeris Pharma when referring to periods prior to the acquisition of Strongbridge, an Irish public limited company, on October 5, 2021 and to Xeris Biopharma when referring to periods on or subsequent to October 5, 2021. As a result, Xeris Pharma became the predecessor to Xeris Biopharma Holdings, Inc. upon completion of the Merger on October 5, 2021.

Liquidity and capital resources

The Company has incurred operating losses since inception and has an accumulated deficit of $493.8 million as of March 31, 2022. The Company expects to continue to incur net losses for at least the next 12 months beyond the issuance date of these consolidated financials. Based on the Company's current operating plans, existing working capital at March 31, 2022 and capital raised in the first quarter, the Company believes the cash resources are sufficient to sustain operations and capital expenditure requirements for at least the next 12 months from the issuance date of these consolidated financial statements. If needed, the Company may elect to finance the 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, Keveyis and Recorlev. Market volatility resulting from the COVID-19 pandemic, and geopolitical instability resulting from the ongoing military conflict between Russia and Ukraine, rising interest rates, the tightening of lending standards 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 our common stockholders, the terms of the debt could impose significant restrictions on the 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 the business strategies. If additional funding is not secured when required, the Company may need to delay or curtail the 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, 2021 included in the Company's Annual Report on Form 10-K filed with the SEC on March 11, 2022.

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 who 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, Keveyis and Recorlev in the United States only and Ogluo (European brand name of Gvoke) in the United Kingdom.

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.

Refer to the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021 for further discussion of the Company's accounting policies.

New accounting pronouncements

Recently issued accounting pronouncements

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers.* This update requires that an acquirer recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606, *Revenue from Contracts with Customers.* This standard requires that an acquirer recognize and measure such contract assets and contract liabilities under Topic 606, Revenue from Contracts with Customers, as if it had originated the contracts. This standard also allows for election of certain practical expedients, which are applied on an acquisition-by-acquisition basis. This standard is effective for the Company for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted, including for any interim period, and if elected, this standard is applied retrospectively for any acquisitions that occurred in the fiscal year of interim adoption. Since the Company already adopted ASC 2014-09, *Revenue from Contracts with Customers (Topic 606)*, which provides a single comprehensive accounting model on revenue recognition for contracts with customers, the Company elected to early adopt ASU 2021-08 in the fourth quarter 2021 as the Company completed the acquisition of Strongbridge. Therefore, the Company has accounted for the acquisition of all contracts with customers from the Strongbridge acquisition in accordance with ASC 606. Under previous U.S. GAAP, the Company would have discounted the acquired contracts with customers to present value as of the acquisition closing date.

In May 2021, the FASB issued ASU No. 2021-04, *Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation-Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40)*. This standard addresses issuer's accounting for certain modifications or exchanges of freestanding equity-classified written call options. This standard is effective for all entities, for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted. The Company adopted this standard in first quarter 2022 and it did not have a material impact on the 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. This standard enhances the consistency of earnings-per-share ("EPS") calculations by requiring that an entity use the if-converted method and that the effect of potential share settlement be included in diluted EPS calculations and disclosures. This standard is effective for the Company for fiscal years beginning after December 15, 2023. Early adoption is permitted but not earlier than periods beginning after December 15, 2020. The Company is currently evaluating the impact the adoption of this new standard will have on the financial statements and disclosures.

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 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. The Company does not currently expect the adoption of this new standard to have a material impact on the financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. This standard eliminates certain exceptions in the current guidance related to the approach for intra-period tax allocation and the methodology for calculating income taxes in an interim period and amends other aspects of the guidance to help clarify and simplify U.S. GAAP. This standard will be effective for the Company for annual periods beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022. Early adoption of this standard is permitted. The Company does not currently expect the adoption of this new standard to have a material impact on the financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. This standard requires entities to estimate an expected lifetime credit loss on financial assets ranging from short-term trade accounts receivable to long-term financings and report credit losses using an expected losses model rather than the incurred losses model that was previously used and establishes additional disclosures related to credit risks. For available-for-sale debt securities with unrealized losses, the standard will require allowances to be recorded instead of reducing the amortized cost of the investment. This standard limits the amount of credit losses to be recognized for available-for-sale debt securities to the amount by which carrying value exceeds fair value and requires the reversal of previously recognized credit losses if fair value increases. This standard is effective for the Company for fiscal years beginning after December 15, 2020, and interim periods within fiscal years beginning after December 15, 2021. On November 15, 2019, the FASB delayed the effective date of FASB ASC Topic 326 for certain small public companies and other private companies. As amended, the effective date of ASC Topic 326 was delayed until fiscal years beginning after December 15, 2022 for SEC filers that are eligible to be smaller reporting companies under the SEC's definition, as well as private companies and not-for-profit entities. The Company is currently evaluating the impact the adoption of this new standard will have on the financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842).* The new standard requires lessees to record a right-of-use asset and a lease liability for all leases with a term of greater than twelve months regardless of their classification. Leases will be classified as either operating or finance leases under the new guidance. Operating leases will result in straight-line expense in the income statement, similar to current operating leases, and finance leases will result in more expense being recognized in the earlier years of the lease term, similar to current capital leases. This standard is effective for the Company for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. The FASB has extended the effective date of this standard for certain companies. As amended in ASU 2020-05, this standard will be effective for the Company for fiscal years beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022. The Company is currently evaluating the impact the adoption of this new standard will have on the financial statements and related disclosures; however, since the Company is a lessee to certain leases for property whose terms exceed twelve months, it expects, once adopted, to report assets and liabilities related to these leases on the balance sheet.

Note 3. Business combination

On May 24, 2021, Xeris Pharma issued an announcement pursuant to Rule 2.5 of the Irish Takeover Panel Act 1997 (as amended), Takeover Rules, 2013, disclosing that the boards of directors of Xeris Pharma and Strongbridge (with the exception of Jeffrey W. Sherman, M.D., a director in common to both companies, who abstained from the voting), had reached agreement on the terms of a recommended acquisition of Strongbridge by Xeris Pharma (the "Acquisition"). Xeris Pharma, Strongbridge, Xeris Biopharma and Wells MergerSub, Inc., a Delaware corporation ("MergerSub"), entered into a Transaction Agreement, dated as of May 24, 2021 (the "Transaction Agreement").

On October 5, 2021 (the "acquisition closing date"), pursuant to the Transaction Agreement, Xeris Pharma completed the acquisition of Strongbridge. Upon completion of the Acquisition, (a) the Company acquired Strongbridge by means of a scheme of arrangement (the "Scheme") under Irish law pursuant to which the Company acquired all of the outstanding ordinary shares of Strongbridge ("Strongbridge Shares") in exchange for (i) 0.7840 of a share of the Company's common stock ("Company Shares") and cash in lieu of fractions of Company Shares in exchange for each Strongbridge Share held by such Strongbridge Shareholders and (ii) one (1) non-tradeable CVR, worth up to a maximum of $1.00 per Strongbridge Share settleable in cash, additional Company Shares, or a

combination of cash and additional Company Shares, at the Company's sole election and (b) MergerSub merged with and into Xeris Pharma, with Xeris Pharma, as the surviving corporation in the merger (the "Merger," and the Merger together with the Acquisition, the "Transactions").

Upon completion of the Merger, (a) each share of Xeris Pharma common stock was assumed by the Company and converted into the right to receive one Company Share and any cash in lieu of fractional entitlements due to a Xeris Pharma shareholder and (b) each Xeris Pharma option, stock appreciation right, restricted share award and other Xeris Pharma share based award that was outstanding was assumed by the Company and converted into an equivalent equity award of the Company, which award was subject to the same number of shares and the same terms and conditions as were applicable to the Xeris Pharma award in respect of which it was issued. On October 6, 2021, the Company's common stock, par value $0.0001 per share, commenced trading on the Nasdaq Global Select Market ("Nasdaq") under the ticker symbol "XERS".

At the effective time of the Scheme, Strongbridge's outstanding equity awards were treated as set forth in the Transaction Agreement, such that (i) each Strongbridge Share Award was vested and settled for Strongbridge Shares immediately prior to the effective time of the Scheme, (ii) each Strongbridge Option became fully vested and exercisable immediately prior to the effective time of the Scheme, (iii) each unexercised Strongbridge Option was assumed by the Company and converted into an option to purchase Company Shares (each, a "Strongbridge Rollover Option"), with the exercise price per Company Share and the number of Company Shares underlying the Strongbridge Rollover Option adjusted to reflect the conversion from Strongbridge Shares into Company Shares, provided that each Strongbridge Rollover Option will continue to have, and be subject to, the same terms and conditions that applied to the corresponding Strongbridge Rollover Option (except for terms rendered inoperative by reason of the Acquisition or for immaterial administrative or ministerial changes that are not adverse to any holder other than in any de minimis respect), provided that the terms of each Strongbridge Rollover Option with an exercise price of $4.50 or less (prior to the adjustment described above) were amended to provide that it shall remain exercisable for a period of time following the effective time of the Scheme equal to the lesser of (A) the maximum remaining term of such corresponding Strongbridge Option and (B) the fourth anniversary of the effective date of the Merger, in each case regardless of whether the holder of such Strongbridge Rollover Option experiences a termination of employment or service on or following the effective time of the Scheme and (iv) the Company issued to each holder of a Strongbridge Rollover Option one CVR with respect to each Strongbridge Share subject to the applicable Strongbridge Option, provided that in no event shall such holder be entitled to any payments with respect to such CVR unless the corresponding Strongbridge Option has been exercised on or prior to any such payment.

Additionally, on completion of the Acquisition, (a) each outstanding and unexercised Strongbridge warrant (except private placement warrants) was assumed by the Company such that, upon exercise, the applicable holders will have the right to have delivered to them the reference property (as such term is defined in the Strongbridge assumed warrants) and (b) each outstanding and unexercised Strongbridge private placement warrant was assumed by the Company such that the applicable holders will have the right to subscribe for Company Shares, in accordance with certain terms of the Strongbridge private placement warrants.

The Acquisition was accounted for as a business combination using the acquisition method of accounting under the provisions of ASC 805, *Business Combinations*.

The Acquisition will diversify and increase the Company's revenue base into the specialized commercial platforms and expand the development pipeline. Additionally, the Company expects to achieve significant synergies by eliminating redundant processes and headcount, most notably within the commercial, executive and general and administrative functions.

Acquisition consideration

The acquisition-date fair value of the consideration transferred totaled $169.1 million, which consisted of the following:

Fair value of consideration transferred (in thousands, except share number)		
Xeris Biopharma Holdings, Inc. common shares (58,082,606 shares)	$	137,655
Unexercised Strongbridge options assumed by Xeris Pharma and converted into options to purchase Company Shares		6,404
Strongbridge warrants		2,467
Contingent consideration (Contingent value rights)		22,531
Total consideration	$	169,057

The Company's acquisition accounting is primarily pending final valuation and potential CVR fair value adjustments to the consideration. The fair value of the common stock issued was determined based on the closing market price of shares of the Company's common stock on the acquisition date.

The fair value of the private placement warrants was determined using the Black-Scholes valuation model which considers the expected terms of the private placement warrants from the acquisition closing date as well as the risk-free interest rate, current exercise price of $2.50 multiplied by (the average of Xeris Pharma closing prices for the 20-day period ending three trading days prior to acquisition closing date/the average of Strongbridge closing prices for the 20-day period ending three trading days prior to acquisition closing date) and a volatility of 50%.

The CVRs represent contingent additional consideration of up to $1.00 for each CVR, payable to CVR holders, to satisfy future performance milestones, settleable in cash, common stock, or a combination of cash and common stock, at the Company's sole election. The CVRs are conditioned upon the achievement of the following:

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

Refer to "Note 12 - Fair Value Measurements", for information related to the fair value measurements on CVRs and valuation methods utilized.

As of the acquisition closing date, there were approximately 74.1 million CVRs. There will be additional issuance of up to 10.5 million. CVRs to holders of Strongbridge rollover options and assumed warrants upon exercise.

Preliminary purchase price allocation

In accordance with ASC 805, Xeris Pharma was determined to be the accounting acquirer in the Acquisition. The Company has applied the acquisition method of accounting that requires, among other things, that identifiable assets acquired and liabilities assumed generally be recognized on the balance sheet at fair value as of the acquisition date. In determining the fair value, the Company utilized various forms of the income, cost and market approaches depending on the asset or liability being fair valued. The estimation of fair value required significant judgment related to future net cash flows (including revenue, operating expenses, and working capital), discount rates reflecting the risk inherent in each cash flow stream, competitive trends, market comparables and other factors. Inputs were generally determined by taking into account historical data (supplemented by current and anticipated market conditions), trends and growth rates.

The initial allocation of the purchase price was based on preliminary valuations and assumptions. During the fourth quarter of 2021, the Company did record $4.9 million of net deferred tax liabilities based on jurisdictional outcomes. Otherwise, there were no material measurement period adjustments.

The table below presents the estimated fair value that was allocated to Strongbridge's assets and liabilities based upon fair values as determined by the Company (in thousands):

		Fair Value
Cash and cash equivalents	$	38,469
Trade accounts receivable		4,344
Inventory		1,862
Prepaid expenses and other current assets		4,683
Property and equipment		161
IPR&D		121,000
Other intangible asset		11,000
Other assets		860
Total identifiable assets acquired		182,379
Accounts payable		(279)
Other accrued liabilities		(13,703)
Accrued trade discounts and rebates		(4,844)
Supply agreement liability		(12,000)
Deferred tax liabilities		(4,942)
Other liabilities		(413)
Total liabilities assumed		(36,181)
Net identifiable assets acquired		146,198
Goodwill		22,859
Net assets acquired	$	169,057

The above allocation of the purchase price is provisional and is still subject to change within the measurement period (up to one year from the acquisition date) as a result of additional information obtained with regards to facts and circumstances that existed as of the acquisition date. The final allocation of the purchase price is expected to be completed as soon as practicable, but no later than one year from the date of the Transactions.

The following is a description of the methods used to determine the fair values of significant assets and liabilities.

In-process research and development ("IPR&D") and other intangible asset

The IPR&D intangible asset represents the recording of the acquired IPR&D indefinite-lived intangible asset related to Recorlev. The other intangible asset represents the commercial product in the form of Keveyis. The fair value for the IPR&D and other intangible assets were based on assumptions developed by management and other information compiled by management including, but not limited to, discounted future expected cash flows. The fair value of intangibles relies heavily on projected future net cash flows including, but not limited to, key assumptions for revenue and operating expenses. The discount rates used for intangible assets are based on current market rates and reflect the risk inherent in each cash flow stream. The estimated useful life of the intangible asset of Keveyis is five years which reflects the time period in which the Company expects to receive the benefits of the related cash flows.

Goodwill

The excess of the consideration transferred over the fair value of assets acquired and liabilities assumed was recognized as goodwill. The goodwill is generated from operational synergies and cost savings the Company expects to achieve from the combined operations and Strongbridge's knowledgeable and experienced workforce. The majority of the goodwill is not expected to be deductible for tax purposes.

Transaction costs

In connection with the Transactions, the Company incurred significant expenses in the 2021, such as transaction costs (e.g., bankers' fees, legal fees, consultant fees, etc.). The transaction costs totaled $8.6 million and were recorded in the selling, general and administrative expenses in third quarter 2021 through first quarter 2022.

Supplemental pro forma information

The following unaudited supplemental pro forma financial information assumes the companies were combined as of January 1, 2021. The pro forma financial information as presented below is for informational purposes only and is based on estimates and assumptions that have been made solely for purposes of developing such pro forma information. This is not necessarily indicative of the results of operations that would have been achieved if the Acquisition had taken place on January 1, 2021, nor is it necessarily indicative of future results. Consequently, actual results could differ materially from the unaudited pro forma financial information presented below. The following table presents the pro forma operating results as if Strongbridge had been included in the Company's Condensed Consolidated Statements of Operations as of January 1, 2021 (unaudited, in thousands):

	Three Months Ended March 31,	
	2022	**2021**
Revenue	$ 22,073	$ 16,577
Net loss	$ (33,714)	$ (28,737)

These amounts have been calculated after applying the Company's accounting policies and adjusting the results of Xeris to reflect the additional depreciation and amortization that would have been charged assuming the fair value adjustments to intangible assets had been applied on January 1, 2021.

The unaudited supplemental pro forma information above does not include any cost saving synergies from operating efficiencies. There is a tax impact on the pro forma adjustments due to deferred tax liabilities being greater than the deferred tax assets in Ireland. For the other non-Irish entities, there is no tax impact of the pro forma adjustments reflected as both companies are, and have been for some time, in net operating loss positions and have full valuation allowances against their net deferred tax assets on both a historical and pro forma basis.

Note 4. Short-term investments

The Company classifies investments in debt securities as available-for-sale. Debt securities are comprised of highly liquid investments with minimum "A" rated securities and, as of March 31, 2022, consist of U.S. Treasury and agency bonds and corporate entity commercial paper and securities, all with maturities of more than three months but less than one year at the date of purchase. Debt securities as of March 31, 2022 had an average remaining maturity of 0.4 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 sheet. Refer to "Note 12 - Fair Value Measurements", for information related to the fair value measurements and valuation methods utilized.

The following table represents the Company's available-for-sale investments by major security type as of March 31, 2022 and December 31, 2021 (in thousands):

	March 31, 2022			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Total Fair Value
Investments:				
Commercial paper	$ 17,684	$ —	$ (32)	$ 17,652
Corporate securities	9,409	—	—	9,409
Foreign government securities	1,326	—	(10)	1,316
Total available-for-sale investments	$ 28,419	$ —	$ (42)	$ 28,377

	December 31, 2021			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Total Fair Value
Investments:				
Commercial paper	$ 21,773	$ —	$ —	$ 21,773
Corporate securities	12,072	2	(7)	12,067
Foreign government securities	1,324	—	(2)	1,322
Total available-for-sale investments	$ 35,169	$ 2	$ (9)	$ 35,162

The Company reviews available-for-sale investments for other-than-temporary impairment loss periodically. The Company considers factors such as the duration, severity of and reason for the decline in value, the potential recovery period and our intent to sell. For debt securities, the Company also consider whether (i) it is more likely than not that the Company will be required to sell the debt securities before recovery of their amortized cost basis and (ii) the amortized cost basis cannot be recovered as a result of credit losses. During three months ended March 31, 2022 and 2021, the Company did not recognize any other-than-temporary impairment losses. All marketable securities with unrealized losses have been in a loss position for less than twelve months.

Note 5. Inventory

The components of inventories consisted of the following (in thousands):

	March 31, 2022	December 31, 2021
Raw materials	$ 5,018	$ 5,181
Work in process	7,068	7,442
Finished goods	4,786	5,495
Inventory	$ 16,872	$ 18,118

Inventory reserves were $0.8 million and $1.0 million at March 31, 2022 and December 31, 2021, respectively.

Note 6. Property and equipment

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

	March 31, 2022	December 31, 2021
Lab equipment	$ 3,759	$ 3,739
Furniture and fixtures	1,355	1,355
Computer equipment	314	307
Office equipment	8	28
Software	307	307
Leasehold improvements	5,004	5,026
Total property and equipment	10,747	10,762
Less: accumulated depreciation and amortization	(4,456)	(4,135)
Property and equipment, net	$ 6,291	$ 6,627

Depreciation and amortization expense relating to property and equipment was $0.3 million and $0.3 million for the three months ended March 31, 2022 and March 31, 2021, respectively.

Note 7. Intangible assets

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

		March 31, 2022		
	Life (Years)	Gross assets	Accumulated amortization	Net
Definite-lived intangible asset - Keveyis	5	$ 11,000	$ (1,100)	$ 9,900
Definite-lived intangible asset - Recorlev	14	121,000	(2,161)	118,839
Total intangible assets		$ 132,000	$ (3,261)	$ 128,739

Keveyis is the developed product rights obtained from Strongbridge's acquisition of U.S. marketing rights to Keveyis (dichlorphenamide) from Taro Pharmaceuticals U.S.A., Inc. ("Taro").

The IPR&D product Recorlev acquired from the Acquisition was approved by the FDA on December 30, 2021. The IPR&D asset was reclassified as a definite-lived intangible asset in 2021 and began being amortized on a straight-line basis over an estimated useful life of 14 years assigned based on the economic life and remaining patent life.

As of March 31, 2022, expected amortization expense for intangible assets subject to amortization for the next five years is as follows (in thousands):

2022 remaining	$ 8,132
2023	10,843
2024	10,843
2025	10,843
2026	10,293
Thereafter	77,785
Total	$ 128,739

Note 8. Other accrued liabilities

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

	March 31, 2022	December 31, 2021
Accrued employee costs	$ 9,558	$ 19,638
Supply agreement - current portion	6,276	6,009
Accrued supply chain costs	1,360	595
Accrued marketing and selling costs	2,262	3,237
Accrued research and development costs	1,572	1,998
Accrued restructuring charges	6,941	6,715
Accrued interest expense	1,165	1,413
Accrued Strongbridge transaction costs	112	1,839
Accrued Debt	341	—
Accrued other costs	4,771	7,644
Other accrued liabilities	$ 34,358	$ 49,088

Note 9. Restructuring costs

After the completion of the Acquisition on October 5, 2021, the Company undertook a strategic restructuring to streamline the organization and realize operating expense synergies. The costs associated with the restructuring include employee termination costs. The Company expects to incur total restructuring cost of approximately $11.1 million related to this plan. Costs of $1.4 million were incurred in the three months ended March 31, 2022, the majority of which is included in selling, general and administrative expenses in the Condensed Consolidated Statements of Operations and Comprehensive Loss. The Company anticipates the restructuring related to the Strongbridge acquisition to be substantially complete by the fourth quarter of 2023. The restructuring reserve is included in other accrued liabilities in the condensed consolidated balance sheet.

The following table summarizes the initial restructuring reserve in connection with the Strongbridge acquisition and the payments made during the three months ended March 31, 2022 (in thousands):

	Restructuring Costs
Balance accrued at December 31, 2021	$ 6,713
Restructuring costs	1,413
Payments	(1,185)
Balance accrued at March 31, 2022	$ 6,941

Note 10. Long-term debt

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 "Convertible Notes"), including $11.3 million pursuant to the underwriters' option to purchase additional notes which was exercised in full in July 2020. Xeris Pharma incurred debt issuance costs of $5.1 million in connection with the issuance of the Convertible Notes. Xeris Pharma used $20.0 million and $4.2 million of the net proceeds from the sale to prepay a portion of the principal amount on the Term A Loan (as defined below) and the remaining amount of borrowings outstanding under the PPP Loan (as defined below), respectively.

The Convertible Notes are governed by the terms of a base indenture for senior debt securities dated June 30, 2020 (the “Base Indenture”), between Xeris Pharma and U.S. Bank National Association, as trustee, as supplemented by the first supplemental indenture thereto dated June 30, 2020, between U.S. Bank National Association, as trustee, and the second supplemental indenture thereto dated October 5, 2021 ("the Supplemental Indentures" and together with the Base Indenture, the "Indenture"), among the Company, Xeris Pharma and U.S. Bank National Association, as trustee. The 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, beginning on January 15, 2021, to holders of record at the close of business on the preceding January 1 and July 1, respectively. The Convertible Notes will mature on July 15, 2025, unless earlier converted or redeemed or repurchased by the Company.

At any time before the close of business on the second scheduled trading day immediately before the maturity date, holders of Convertible Notes may convert their 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 the then-applicable conversion rate. The conversion rate for the Convertible Notes will initially be 326.7974 shares of the Company's common stock per $1,000 principal amount of Convertible Notes, which represents an initial conversion price of approximately $3.06 per share of common stock, and is subject to adjustment under the terms of the Convertible Notes. In the event of certain circumstances, the Company will increase the conversion rate, provided that the conversion rate will not exceed 367.6470 shares of the Company's common stock per $1,000 principal amount of Convertible Notes.

In the second half of 2020, $8.4 million in principal amount of Convertible Notes were converted into 2,736,591 shares of Xeris Pharma's common stock at the conversion rate of 326.7974 shares per $1,000 principal amount of Convertible Notes. Additionally, in the fourth quarter of 2020, Xeris Pharma entered into separate, privately negotiated exchange agreements with certain holders of Convertible Notes to exchange $30.7 million in principal amount of Convertible Notes for 10,435,200 shares of Xeris Pharma's common stock. Xeris Pharma recognized a $2.6 million loss related to the convertible note exchange transactions.

The Convertible Notes are senior, unsecured obligations and are equal in right of payment with Xeris Pharma'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 Xeris Pharma is not a holder thereof) preferred equity, if any, of the Company's other direct and indirect subsidiaries.

As a result of the Transactions, and pursuant to the Second Supplemental Indenture, the Convertible Notes are no longer convertible into shares of common stock of Xeris Pharma common stock. Instead, subject to the terms and conditions of the Indenture, the 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, and the "Reference Property" provisions in the Indenture.

Pursuant to the Second Supplemental Indenture, the Company agreed to guarantee (a) the full and punctual payment when due of all monetary obligations of Xeris Pharma under the Indenture and (b) the full and punctual performance within applicable grace periods of all other obligations of Xeris Pharma under the Indenture.

Prior Loan Facility

In February 2018, Xeris Pharma entered into the Loan and Security Agreement, dated as of February 28, 2018 (as amended, the "Original Loan Agreement"), with Oxford Finance LLC ("Oxford"), as the collateral agent (in such capacity, the "Collateral Agent") and a lender, and Silicon Valley Bank, as a lender ("SVB", and together with Oxford, the "Lenders"), which provided for a senior secured loan facility of up to an aggregate principal amount of $45.0 million. The first tranche of $20.0 million was drawn down in February 2018 (the "2018 Term A Loan"). The second tranche of $15.0 million was drawn down in September 2018 (the "2018 Term B Loan"). Xeris Pharma also issued warrants to the Lenders to purchase common stock, which is further discussed in "Note 11 - Warrants".

In September 2019, Xeris Pharma entered into an Amended and Restated Loan and Security Agreement (the "Loan Agreement") with the Lenders which amended and restated the Original Loan Agreement in its entirety. The Loan Agreement provided for the Lenders to extend up to $85.0 million in term loans to Xeris Pharma in three tranches. The initial tranche of $60.0 million (the "Term A Loan") was drawn down in September 2019. Additional tranches of $15.0 million (the "Term B Loan") and $10.0 million (the "Term C Loan") were contingent on achievement of certain revenue targets which were not achieved. In conjunction with the execution of the Loan Agreement, the 2018 Term A Loan and 2018 Term B Loan were repaid and the final payment fee of $2.3 million was paid.

Effective April 21, 2020, Xeris Pharma entered into that certain First Amendment to Amended and Restated Loan and Security Agreement with the Lenders (the "First Amendment") to amend the Loan Agreement to allow Xeris Pharma to incur indebtedness under the U.S. Small Business Administration (the "SBA") the Paycheck Protection Program enabled by the Coronavirus Aid, Relief and Economic Security Act of 2020 (the "CARES Act") in the amount of $5.1 million (the "PPP Loan").

On June 30, 2020, Xeris Pharma entered into that certain Second Amendment to Amended and Restated Loan and Security Agreement with the Lenders (the "Second Amendment") to amend the Loan Agreement to provide for the Lenders' consent to and allow for Xeris Pharma's underwritten public offering of Xeris Pharma's 5.00% Convertible Senior Notes due 2025 and permit the Company to prepay the PPP Loan in full. The Second Amendment also provided for the extension of the interest-only payment period, certain revenue milestones and extensions of the maturity date.

Pursuant to the Second Amendment, Xeris Pharma prepaid a portion of the Term A Loan equal to the sum of (i) $20.0 million, plus all accrued and unpaid interest as of the date of the Second Amendment, (ii) the applicable final payment fee of $0.6 million, (iii) the applicable prepayment fee of $0.3 million and (iv) all outstanding Lenders' expenses as of the date of the Second Amendment.

On August 5, 2020, Xeris Pharma entered into that certain Third Amendment to Amended and Restated Loan and Security Agreement with the Lenders (the “Third Amendment”) to amend the Loan Agreement to (i) amend the definition of “Permitted Indebtedness” to include a new standby letter of credit in an amount not to exceed $0.4 million issued to the landlord for Xeris Pharma’s new leased laboratory space and (ii) permit the sale of certain equipment related to the relocation of Xeris Pharma’s research and development laboratory from San Diego to Chicago.

On October 23, 2020, Xeris Pharma entered into that certain Fourth Amendment to Amended and Restated Loan and Security Agreement with the Lenders (the "Fourth Amendment") to amend the Loan Agreement to provide an additional tranche of $3.5 million (the “Term D Loan”, and, together with the Term A Loan, Term B Loan, and Term C Loan, the "Term Loan"), available upon execution. The Term D Loan of $3.5 million was drawn in November 2020 and will be payable under the same payment terms as the term loans. After repayment, the loan may not be re-borrowed.

On May 3, 2021, Xeris Pharma entered into that certain Fifth Amendment to Amended and Restated Loan and Security Agreement with the Lenders (the “Fifth Amendment”) to amend the Loan Agreement to provide for revenue milestone triggering interest-only payment periods. The Company achieved all revenue milestones and therefore classified the amounts due under the Amended Loan Agreement as non-current on the balance sheet as of March 31, 2022.

On May 24, 2021, Xeris Pharma entered into that certain Consent Under Amended and Restated Loan and Security Agreement (the “Consent”) with the Lenders to permit the Company to execute, deliver and perform (a) the Transaction Agreement with Strongbridge and (b) that certain Expenses Reimbursement Agreement dated as of May 24, 2021 by and between Xeris Pharma and Strongbridge pursuant to which Xeris Pharma and Strongbridge agreed to certain reimbursement obligations related to the transactions contemplated by the Transaction Agreement.

In connection with the completion of the Transactions, on October 5, 2021, the Company entered into that certain Joinder and Sixth Amendment to Amended and Restated Loan and Security Agreement (the “Sixth Amendment”) with Xeris Pharma, the Lenders and Strongbridge US, Inc. (“Strongbridge US”) (each of Strongbridge US and the Company, a “New Borrower”) to amend the Loan Agreement. The Sixth Amendment adds the New Borrowers as borrowers under the Loan Agreement and provides for the grant by the New Borrowers to the Collateral Agent, for the ratable benefits of the Lenders, a first priority security interest on substantially all of their assets, including intellectual property, subject to certain exceptions. The Sixth Amendment also updates certain negative covenants and definitions to among, other things, permit certain intercompany arrangements and restructuring activities, as well as modifies the revenue milestones to address both Gvoke and non-Gvoke revenues.

All of the loans incur interest at a floating per annum rate in an amount equal to the sum of 6.25% plus the greater of (a) 2.43% and (b) the thirty-day U.S. Dollar LIBOR rate (or, the LIBOR replacement rate as applicable). For the period from the funding date of the Term A Loan through and including March 31, 2022, the interest rate was 8.68%. The Company has incurred total debt issuance costs of $2.0 million related to the Original Loan Agreement and the Amended Loan Agreement, which are being amortized to interest expense over the life of the loan using the effective interest method. The remaining balance of unamortized debt issuance costs have been reflected as a direct reduction to the loan balance.

The Amended Loan Agreement allows the Company to voluntarily prepay the outstanding amounts thereunder, but not less than $2.0 million of the outstanding principal at any time. The Company is subject to a prepayment fee equal to 1.50% of the principal amount being prepaid. Also, a final payment fee of 3.0% multiplied by the amount to be repaid is due upon the earliest to occur of the maturity date of the Amended Loan Agreement, the acceleration of the amounts outstanding under the Amended Loan Agreement or prepayment of such borrowings and is recorded in other liabilities on the condensed consolidated balance sheets.

The Amended Loan Agreement contains customary representations and warranties, events of default (including an event of default upon a material adverse change of the Company) and affirmative and negative covenants, including, among others, covenants that limit or restrict the Company’s ability to incur 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.

Hayfin Loan Agreement

In March 2022, the Company, Xeris Pharma and certain subsidiary guarantors of the Company entered into a Credit Agreement and Guaranty (the "Hayfin Loan 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 Hayfin Loan Agreement provided for the New Lenders to extend $100.0 million in term loans (the “Initial Loan”) 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 (the “Delayed Draw Term Loan” and, together with the Initial Loan, the “Loans”) in no more than three drawings of no less than $10.0 million per drawing, subject to the Company being in pro forma compliance with the financial covenants and other conditions set forth therein. In conjunction with the execution of the Hayfin Loan Agreement, the Amended 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 Amended Loan Agreement in full, the proceeds will otherwise be used for general corporate purposes. After repayment, the Loans may not be re-borrowed.

All of the Loans incur interest at a floating per annum rate in an amount equal to the sum of (i) 9.0% (or 8.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate) plus (ii) the greater of (x) (1) CME Group Benchmark Administration Limited (CBA) Term SOFR (or the replacement rate, if applicable) if CBA Term SOFR is greater than 1.00% plus 0.26161% or (2) 1.00% if CME Term SOFR is less than 1.00% and (y) one percent (1.00%) per annum (or 2.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate). The Company has incurred total debt issuance costs of approximately $3.5 million related to the Hayfin Loan Agreement, which are being amortized to interest expense over the life of the loan using the effective interest method. The remaining balance of unamortized debt issuance costs have been reflected as a direct reduction to the loan balance. The effective interest rate, including the amortization of debt discount and debt issuance costs, amounts to 12.1%, maturing March 2027.

The Loans will mature on March 8, 2027; provided, however, that the Loans will mature on January 15, 2025 if the Convertible Notes are still outstanding as of such date and either (i) the maturity date thereof has not been extended to a date on or after September 4, 2027 or (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 $15.0 million of cash on hand, is sufficient to redeem and discharge the Convertible Notes in full.

The Hayfin Loan Agreement allows the Company to voluntarily prepay the outstanding amounts thereunder. The Company is subject to an early prepayment fee equal to (i) for any prepayment that occurs 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: (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 (5.0%), (B) after the third anniversary of the closing date and on or prior to the fourth anniversary of the closing date, three percent (3.0%), and (C) after the fourth anniversary of the closing date, zero percent (0.0%).

The Hayfin Loan 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 ability to incur 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. Associated with the Hayfin Loan Agreement, the New Lenders also received warrants to purchase 1,315,789 shares of the common stock of the Company at a price of $2.28 per share. Please refer to "Note 11 - Warrants" for further details.

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

	March 31, 2022	December 31, 2021
Convertible Notes	$ 47,175	$ 47,175
Loan facility	95,820	43,500
Less: unamortized debt issuance costs	(5,356)	(2,608)
Long-term debt, net of unamortized debt issuance costs	$ 137,639	$ 88,067

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

2022	$ —
2023	—
2024	—
2025	47,175
2026	—
Thereafter	100,000
	$ 147,175

For the three months ended March 31, 2022 and 2021, the Company recognized interest expense of $3.5 million and $1.8 million, respectively, of which $0.2 million and $0.3 million, respectively, related to the amortization of debt issuance costs. Included in the interest expense for the three months ended March 31, 2022 was also a $1.3 million loss on extinguishment of debt related to the Senior Secured Loan Facility with SVB which ceased in March 2022.

Note 11. Warrants

Associated with the Armistice securities purchase agreement disclosed in "Note 13 - Stockholders' equity", the Company also issued warrants (the "Armistice Warrants") to purchase an aggregate of 5,119,454 shares of the Company's common stock at an exercise price of $3.223 per share. The warrants became exercisable immediately upon the closing of the transaction and have a term of five years from the earliest of the date (a) of effectiveness of the resale registration statement, which was February 7, 2022, (b) all of the shares and the Company's common stock issuable upon exercise of the warrants (the "Warrant Shares") have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, (c) following the one-year anniversary of the date of closing provided that the holder of Shares or Warrant Shares is not an affiliate of the Company, or (d) all of the shares and Warrant Shares may be sold pursuant to an exemption from registration under Section 4(a)(1) of the Securities Act without volume or manner-of-sale restrictions.

Associated with the Hayfin Loan Agreement disclosed in "Note 10 - Long-term Debt", the New Lenders also received warrants to purchase 1,315,789 shares of the common stock of the Company at a price of $2.28 per share. The warrants are (i) exercisable until the seventh (7th) anniversary of the closing date; (ii) freely transferable and detachable from the Loans; and (iii) subject to customary warrant holder rights and protections, including structural-based anti-dilution protection and adjustments for stock dividends, splits, combinations, reclassifications and the like.

As of March 31, 2022, the following warrants were outstanding:

Warrants classified as liabilities:	**Outstanding Warrants**	**Exercise Price per Warrant**	**Expiration Date**
Assumed Strongbridge private placement warrants	4,446,425	$3.005	June 2022
2018 Term A Warrants	53,720	$11.169	February 2025
2018 Term B Warrants	40,292	$11.169	September 2025
	4,540,437		
Warrants classified as equities:			
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
	8,268,258		

The Company recognized gains of $1.2 million, $12,000 and $8,000 upon the change in fair value of the warrants during the three months ended March 31, 2022 related to the assumed Strongbridge private placement warrants, the 2018 Term A Warrants and the 2018 Term B Warrants, respectively. The Company recognized gains of $11,000 and $9,000 upon the change in fair value of the warrants during the three months ended March 31, 2021 related to the 2018 Term A Warrants and the 2018 Term B Warrants, respectively.

Note 12. 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; and

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).

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 takes into account 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, 2022 and December 31, 2021 (in thousands):

	Total as of March 31, 2022	Level 1	Level 2	Level 3
Assets				
Cash and cash equivalents:				
Cash and money market funds	$ 103,771	$ 103,771	$ —	$ —
Investments:				
Corporate securities	9,377	—	9,377	—
Commercial paper	17,684	—	17,684	—
Foreign government	1,316	—	1,316	—
Total investments	$ 28,377	$ —	$ 28,377	$ —
Liabilities				
Contingent value rights	$ 25,347	$ —	$ —	$ 25,347
Warrant liabilities	$ 548	$ —	$ —	$ 548

	Total as of December 31, 2021	Level 1	Level 2	Level 3
Assets				
Cash and cash equivalents:				
Cash and money market funds	$ 67,271	$ 67,271	$ —	$ —
Investments:				
U.S. government securities	—	—	—	—
Corporate securities	12,067	—	12,067	—
Commercial paper	21,773	—	21,773	—
Foreign government	1,322	$ —	$ 1,322	$ —
Total investments	$ 35,162	$ —	$ 35,162	$ —
Liabilities				
Contingent value rights	$ 22,531	$ —	$ —	$ 22,531
Warrant liabilities	$ 1,769	$ —	$ —	$ 1,769

Contingent Value Rights

The fair value of the CVRs is calculated by using a discounted cash flow method for the Keveyis patent milestone and an option pricing method for the Recorlev and Keveyis sales milestones. In the case of Keveyis milestones, the Company applies a scenario-based method and weighted them based on the possible achievement of the milestone. This fair value measurement is based on significant inputs not observable in the market and thus represents a Level 3 measurement as defined in ASC 820, *Fair Value Measurement*. The key assumptions used include the discount rate and sales growth. The estimated value of the CVR consideration is preliminary only and is based upon available information and certain assumptions which the Company's management believes are reasonable under the circumstances. The ultimate payout under the CVRs may differ materially from the assumptions used in determining the fair value of the CVR consideration.

Contingent consideration obligations are recorded at their estimated fair values and these obligations are revalued each reporting period until the related contingencies are resolved. The contingent value rights 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.

As of March 31, 2022, the CVRs were revalued at $25.3 million using the same methods described above. During the first quarter of 2022, a loss of $2.8 million was recognized in the condensed consolidated statements of operations from changes in the fair values of the CVRs. See "Note 15 – Commitments and contingencies" for a discussion of the CVRs.

Warrant liability

The fair value of the Company’s warrant liabilities is based on a Black-Scholes valuation which considers the expected term of the warrants as well as the risk-free interest rate and expected volatility of the Company's common stock. The uncertainty of the fair value measurement due to the use of unobservable inputs and interrelationships between these unobservable inputs could resulted in higher or lower fair value measurement.

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

Balance at December 31, 2021	$	1,769
Change in fair value of warrants		(1,221)
Balance at March 31, 2022	$	548

There were no transfers between any of the levels of the fair value hierarchy during the three months ended March 31, 2022.

Note 13. Stockholders' equity

The Company’s 375.0 million authorized shares of stock are divided into 350.0 million shares of common stock, par value $0.0001 per share, and 25.0 million shares of undesignated preferred stock, par value $0.0001 per share. At March 31, 2022 none of the 25.0 million shares of preferred stock were outstanding, and the Company has no present plans to issue any shares of preferred stock. The Company’s board of directors has the authority, without action by the Company’s stockholders, to designate and issue the preferred stock in one or more series and to designate the rights, preferences, limitations and privileges of each series of preferred stock, which may be greater than the rights of the Company’s common stock.

The Company has not paid any cash dividends on the common stock during the periods presented.

As of October 5, 2021, when the Company completed the acquisition of Strongbridge, Xeris Pharma sold an aggregate of 204,427 shares of common stock in at-the-market offerings under the shelf registration statement on Form S-3, which was filed on August 6, 2019 and declared effective by the SEC on August 21, 2019, for gross proceeds of $1.8 million. The shelf ceased to be available to the Company upon the consummation of the Transactions. The Company filed a shelf registration statement on Form S-3 with the SEC on January 28, 2022, which was declared effective on February 27, 2022 and which covers the offering, issuance and sale by the Company of up to an aggregate of $250.0 million of our common stock, preferred stock, debt securities, warrants and/or units.

In March 2021, the Company completed a registered direct offering of 6,553,398 shares of the common stock at a price of $4.12 per share. Net proceeds from the equity offering were approximately $26.9 million after deducting offering expenses.

On October 5, 2021, the Company completed the acquisition of Strongbridge. Upon completion of the Merger, (a) each share of Xeris Pharma common stock was assumed by the Company and converted into the right to receive one Company Share and any cash in lieu of fractional entitlements due to a Xeris Pharma shareholder and (b) each Xeris Pharma option, stock appreciation right, restricted share award and other Xeris Pharma share based award that was outstanding was assumed by the Company and converted into an

equivalent equity award of the Company, which award was subject to the same number of shares and the same terms and conditions as were applicable to the Xeris Pharma award in respect of which it was issued.

Upon completion of the Merger, the Company acquired all of the outstanding Strongbridge Shares in exchange for (i) 0.7840 of a share of the Company Shares and cash in lieu of fractions of Company Shares in exchange for each Strongbridge Share held by such Strongbridge Shareholders and (ii) one CVR. Strongbridge's outstanding equity awards were treated as set forth in the Transaction Agreement, such that (i) each Strongbridge Share Award was vested and settled for Strongbridge Shares immediately prior to the effective time of the Scheme, (ii) each Strongbridge Option became fully vested and exercisable immediately prior to the effective time of the Scheme, (iii) each unexercised Strongbridge Option was assumed by the Company and converted into an option to purchase Company Shares.

On January 3, 2022, the Company entered into a securities purchase agreement in connection with a private placement with an affiliate of Armistice Capital, LLC ("Armistice") for aggregate gross proceeds of approximately $30.0 million. In accordance with the purchase agreement, the Company issued to Armistice an aggregate of (i) 10,238,908 shares of the Company's common stock, par value $0.0001 per share at a purchase price of $2.93 per share, and (ii) warrants to purchase an aggregate of 5,119,454 shares of the Company's common stock at an exercise price of $3.223 per share. The warrants became exercisable immediately upon the closing of the transaction and have a term of five years from the earliest of the date (a) of effectiveness of the resale registration statement, which was February 7, 2022, (b) all of the shares and the Company's common stock issuable upon exercise of the warrants (the "Warrant Shares") have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, (c) following the one-year anniversary of the date of closing provided that the holder of Shares or Warrant Shares is not an affiliate of the Company, or (d) all of the shares and Warrant Shares may be sold pursuant to an exemption from registration under Section 4(a)(1) of the Securities Act without volume or manner-of-sale restrictions.

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. The Company then pays the minimum statutory withholding taxes in cash. During the three months ended March 31, 2022, 602,000 RSUs vested for which 197,257 shares were withheld to cover the minimum statutory withholding taxes of $0.4 million. During the three months ended March 31, 2021, 220,425 RSUs vested for which 71,782 shares were withheld to cover the minimum statutory withholding taxes of $0.4 million.

Note 14. 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. This plan became effective on the date immediately prior to the effectiveness of the Company's IPO registration statement. 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.

The 2018 Plan provides that the number of shares reserved and available for issuance under the plan will automatically increase each January 1, beginning on January 1, 2019, and each January 1 thereafter, by 4% of the outstanding number of shares of our common stock on the immediately preceding December 31, or such lesser number of shares as determined by the compensation committee. This number is subject to adjustment in the event of a stock split, stock dividend or other change affecting the Company's common stock. On January 1, 2022 and 2021, the number of shares of common stock available for issuance under the 2018 Plan was automatically increased by 4,994,933 shares and 2,384,448 shares, respectively. As of March 31, 2022, there were 3,308,937 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 with a purchase date of the last business day of June and December each year.

This plan became effective on the date immediately prior to the effectiveness of the Company's IPO registration statement. The ESPP provides that the number of shares reserved and available for issuance will automatically increase each January 1, beginning on January 1, 2019 and each January 1 thereafter through January 1, 2028, by the least of (i) 1% of the outstanding number of shares of our common stock on the immediately preceding December 31; (ii) 386,000 shares or (iii) such lesser number of shares as determined by the ESPP administrator. On January 1, 2022 and 2021, the number of shares of common stock available for issuance under the ESPP increased by 386,000 shares and 386,000 shares, respectively. The number of shares reserved under the ESPP is subject to adjustment in the event of a stock split, stock dividend or other change affecting the Company's common stock. As of March 31, 2022, there were 863,727 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 was adopted without stockholder approval pursuant to Rule 5635(c)(4) of the Nasdaq Listing Rules. 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 commercial launch of Gvoke and the expansion of the Company generally. The Company initially reserved 750,000 shares of common stock for the issuance of awards under the Inducement Plan. This number is subject to adjustment in the event of a stock split, stock dividend or other change affecting the Company's common stock. As of March 31, 2022, there were 221,674 shares of common stock available for future issuance under the Inducement Plan.

On October 8, 2020, the Company's stockholders, upon recommendation of the Board of Directors, approved an amendment to the Company's 2011 Plan and 2018 Plan to allow the Company to permit certain employee option holders, subject to specified conditions, to exchange some or all of their outstanding options to purchase shares of the Company's common stock for a lesser number of new options to purchase shares of the Company’s common stock (the “Option Exchange”).

On November 10, 2020, the Company filed with the SEC a Tender Offer Statement on Schedule TO defining the terms and conditions of the Option Exchange. The total number of shares of common stock underlying a new option with respect to an exchanged eligible option was determined by dividing the number of shares of common stock underlying the exchanged eligible option by the applicable exchange ratio and rounding to the nearest whole number, subject to the terms and conditions described in the Exchange Offer. On December 10, 2020, the completion date of the Option Exchange, the Company canceled the options accepted for exchange and granted 832,907 new options to purchase shares of common stock in exchange for 1,127,906 options issued under the 2011 Plan and 2018 Plan. The exercise price per share of the options granted pursuant to the Exchange Offer was $4.09 per share, which was the closing price per share of common stock on The Nasdaq Global Select Market on the grant date of such new options. The new options will vest and become exercisable in two equal installments following the grant date, subject to an option holder's continuous service, and expire seven years from the grant date. On the grant date, the fair values of the options exchanged were similar to the fair values of the new options granted and, as such, the incremental compensation cost related to the Option Exchange was not material.

Assumed Plans

At the effective time of the Scheme, Strongbridge’s outstanding equity awards were treated as set forth in the Transaction Agreement, such that (i) each Strongbridge Share Award was vested and settled for Strongbridge Shares immediately prior to the effective time of the Scheme, (ii) each Strongbridge Option became fully vested and exercisable immediately prior to the effective time of the Scheme, (iii) each unexercised Strongbridge Option was assumed by the Company and converted into an option to purchase Company Shares (each, a “Strongbridge Rollover Option”), with the exercise price per Company Share and the number of Company Shares underlying the Strongbridge Rollover Option adjusted to reflect the conversion from Strongbridge Shares into Company Shares, provided that each Strongbridge Rollover Option will continue to have, and be subject to, the same terms and conditions that applied to the corresponding Strongbridge Rollover Option (except for terms rendered inoperative by reason of the Acquisition or for immaterial administrative or ministerial changes that are not adverse to any holder other than in any de minimis respect), provided that the terms of each Strongbridge Rollover Option with an exercise price of $4.50 or less (prior to the adjustment described above) were amended to provide that it shall remain exercisable for a period of time following the effective time of the Scheme equal to the lesser of (A) the maximum remaining term of such corresponding Strongbridge Option and (B) the fourth anniversary of the effective date of the Merger, in each case regardless of whether the holder of such Strongbridge Rollover Option experiences a termination of employment or service on or following the effective time of the Scheme.

On the acquisition closing date, 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, 2022, there were 3.2 million shares reserved for future grants under the Assumed Plans.

CVRs were also issued to the holders of Strongbridge vested and unexercised options that were outstanding and assumed by the Company at the acquisition date.

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 U.S. 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.

There was no stock options granted during the first quarter of 2022.

Stock option activity under the 2011 Plan, 2018 Plan, Inducement Plan and Assumed Plans for the three months ended March 31, 2022 was as follows:

	Number of Options	Weighted Average Exercise Price Per Share	Weighted Average Contractual Life (Years)
Outstanding - December 31, 2021	11,362,336	$ 5.86	5.62
Granted	—	—	
Exercised	(11,228)	0.69	
Forfeited	(17,084)	6.01	
Expired	(877,423)	8.01	
Outstanding - March 31, 2022	10,456,601	$ 5.69	5.18
Exercisable - March 31, 2022	9,113,304	$ 5.74	4.80
Vested and expected to vest at March 31, 2022	10,456,601	$ 5.69	5.18

As of March 31, 2022, the aggregate intrinsic value of awards vested and expected to vest was $1.2 million.

At March 31, 2022, there was a total of $4.8 million of unrecognized stock-based compensation expense related to stock options that is expected to be recognized over a weighted average period of 1.7 years.

Restricted Share Units

The Company grants 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. 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, 2022 was as follows:

	Number of Units	Weighted Average Grant Date Fair Value Per Share
Unvested balance - December 31, 2021	2,005,041	$ 5.15
Granted	3,977,850	2.81
Vested	(602,000)	5.85
Forfeited	(78,374)	2.81
Unvested balance - March 31, 2022	5,302,517	$ 3.35

As of March 31, 2022, there was $16.1 million of unrecognized stock-based compensation expense related to RSUs, which is expected to be recognized over the weighted-average remaining vesting period of 2.6 years.

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

	Three Months Ended March 31,	
	2022	2021
Cost of goods sold	$ —	$ 16
Research and development	547	347
Selling, general and administrative	2,754	2,098
Total stock-based compensation expense	$ 3,301	$ 2,461

Note 15. Commitments and contingencies

Commitments

Commitments to Taro Pharmaceuticals U.S.A., Inc. ("Taro")

Upon the completion of Strongbridge acquisition, the Company also acquired the supply agreement Strongbridge had with Taro to produce Keveyis. Strongbridge was obligated to purchase annual minimum amounts of product totaling approximately $29.1 million over a six-year period from Taro. As of March 31, 2022, the remaining obligation under the Supply Agreement was $8.0 million. The agreement with Taro may extend beyond the orphan exclusivity period unless terminated by either party pursuant to the terms of the agreement. If terminated by Taro at the conclusion of the orphan exclusivity period, the Company has the right to manufacture the product on its own or has the product manufactured by a third party on its behalf. The Company is also required to reimburse Taro for royalty obligation resulting from its sale of Keveyis to the Company.

Leases

The Company has non-cancellable operating leases for office and laboratory space, which expire at various times in 2031 and 2033. The non-cancellable lease agreements provide for monthly lease payments which increase during the term of each lease agreement.

Future minimum lease payments under operating leases at March 31, 2022 are as follows (in thousands):

2022	$	1,490
2023		2,031
2024		1,981
2025		1,931
2026		1,982
Thereafter		11,741
Total minimum lease payments	$	21,156

Total rent expense under these operating leases was approximately $0.7 million and $0.6 million for the three months ended March 31, 2022 and 2021, respectively.

As of March 31, 2022, the Company had unused letters of credit of $1.7 million which were issued primarily to secure leases.

Contingencies

CVR liability

Upon closing the Transactions, the Company entered into a CVR Agreement. Each CVR entitles its holder to receive additional consideration of up to $1.00, to satisfy future performance milestones, settleable in cash, common stock, or a combination of cash and common stock, at the Company's sole election. As of the acquisition closing date, there were approximately 74.1 million CVRs. There will be additional issuance of up to 10.5 million CVRs to holders of Strongbridge rollover options and assumed warrants upon exercise.

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, 2022, 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 the Convertible Notes are still outstanding as of January 15, 2025 and the maturity date thereof has not been extended to a date on or after September 4, 2027, 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 $15.0 million of cash on hand, is sufficient to redeem and discharge the Convertible Notes in full, then the loans outstanding under the Hayfin Loan Agreement will mature on January 15, 2025.

Note 16. 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:

	As of March 31,	
	2022	**2021**
Shares to be issued upon conversion of Convertible Notes	15,416,667	15,416,667
Vested and unvested stock options	10,456,601	5,299,521
Restricted stock units	5,302,517	1,884,095
Warrants	12,808,695	94,012
Total anti-dilutive securities excluded from EPS computation[1]	43,984,480	22,694,295

[1] 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 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 11, 2022 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," "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, the effect of uncertainties related to the current coronavirus pandemic, or any other health epidemic, on U.S. and global markets, our business, financial condition, operations, third-party suppliers or the global economy as a whole, and other factors discussed in Item 1A of Part II of 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 Pharmaceuticals, Inc. ("Xeris Pharma") when referring to periods prior to the acquisition of Strongbridge Biopharma plc, an Irish public limited company ("Strongbridge") (discussed below) on October 5, 2021 and to Xeris Biopharma Holdings, Inc. when referring to periods on or subsequent to October 5, 2021. Also, throughout this document, unless otherwise noted, references to Gvoke® include Gvoke PFS, Gvoke HypoPen®, Gvoke Kit and Ogluo® (glucagon).

We are a biopharmaceutical company committed to developing and commercializing innovative solutions to enhance the lives of people with life-threatening diseases. Our primary focus is on therapies for patient populations in endocrinology, neurology, and gastroenterology. We currently have three commercially available products, Gvoke, a ready-to-use liquid glucagon for the treatment of severe hypoglycemia, Keveyis, the first and only U.S. Food and Drug Administration ("FDA") approved therapy for primary periodic paralysis ("PPP") and Recorlev, approved by the FDA in December 2021 for the treatment of endogenous hypercortisolemia in adult patients with Cushing's Syndrome. We also have a pipeline of development programs to extend our current marketed products into new indications and uses or bring new products forward using our proprietary formulation technology platforms, XeriSol™ and XeriJect™.

Acquisition of Strongbridge

On May 24, 2021, Xeris Pharma and Strongbridge entered into the Transaction Agreement together with Xeris Biopharma Holdings, Inc., a Delaware corporation ("the Company"), and Wells MergerSub, Inc., a Delaware corporation ("MergerSub") (the "Transaction Agreement") whereby we would acquire Strongbridge (the "Acquisition") pursuant to a scheme of arrangement (the "Scheme") under Irish law. Under the terms of the Transaction Agreement, (i) the Company acquired Strongbridge by means of the Acquisition pursuant to the Scheme and (ii) MergerSub merged with and into Xeris Pharma, with Xeris Pharma as the surviving corporation in the merger (the "Merger," and the Merger together with the Acquisition, the "Transactions"). As a result of the Transactions, both Xeris Pharma and Strongbridge became wholly owned subsidiaries of the Company. The Company acquired all of the outstanding Strongbridge ordinary shares ("Strongbridge Shares") in exchange for (i) 0.7840 of a share of the Company's common stock ("Company Shares") and cash in lieu of fractions of Company Shares due to a holder of Strongbridge Shares per Strongbridge Share and (ii) one (1) non-tradeable contingent value right, worth up to a maximum of $1.00 per Strongbridge Share settleable in cash, additional Company Shares, or a combination of cash and additional Company Shares, at the Company's sole discretion. On October 5, 2021, pursuant to the Transaction Agreement, we completed the Transactions.

Through the Acquisition, we added Keveyis (dichlorphenamide) to our commercial product portfolio. Keveyis is the first and only treatment approved by FDA for hyperkalemic, hypokalemic, and related variants of primary periodic paralysis ("PPP"), a group of rare hereditary disorders that cause episodes of muscle weakness or paralysis. In addition, we added a clinical-stage product candidate for rare endocrine diseases, Recorlev. Recorlev (levoketoconazole), the pure 2S,4R enantiomer of the enantiomeric pair comprising ketoconazole, is a next-generation steroidogenesis inhibitor which serves as a chronic therapy for adults with endogenous Cushing's syndrome. Levoketoconazole has received orphan designation from the FDA and the European Medicines Agency. Recorlev was acquired as an in-process research and development asset and subsequently approved by the FDA on December 30, 2021 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. Recorlev was commercially launched in January 2022.

Patents

We currently own 141 patents issued globally, including a composition of matter patent covering our ready-to-use glucagon formulation that expires in 2036. Upon completion of the Transactions, Xeris Biopharma Holdings, Inc. controls the patents of Xeris Pharma and Strongbridge Dublin Limited, the latter of which has 53 granted patents globally related to proprietary formulations of levoketoconazole (the active pharmaceutical ingredient in Recorlev) and the uses of such formulations in treating certain endocrine-related diseases and syndromes. This includes US Patent No. 11,020,393, which was granted on June 1, 2021, and which provides patent protection through 2040 for the use of Recorlev in the treatment of certain patients with persistent or recurrent Cushing's syndrome.

Outlook and strategies

Our goal is to build a leading and profitable biopharmaceutical company that innovates products that transform the lives of people with life-threatening diseases. To achieve our goal, we are pursuing the following strategies:

- ***Maximize the commercial potential of our three commercial products.*** We have built out a robust endocrinology and rare disease-focused commercial infrastructure – including fully operational patient and provider support teams – primed to bring the benefits of our products to a wider range of patients with unmet needs. Our sales, marketing, market access and patient service capabilities in the United States are positioned to drive the growth of our products. We believe that our ability to execute on this strategy is enhanced by the significant commercial experience of key members of our management team.
- ***Create momentum through commercial execution leading to profitability.*** We have three innovative commercial assets: Gvoke, Keveyis and Recorlev. Gvoke and Keveyis are growing in large untapped addressable markets. We are executing the launch of Recorlev, leveraging our experienced, endocrinology-focused commercial infrastructure, in a large and unsatisfied Cushing Syndrome marketplace. Through the momentum created by the execution of our three commercial products, we believe we will have a path to profitability.
- ***Continue to leverage our technology and expertise to develop a portfolio of product candidates.*** We have an extensive pipeline of development programs to extend the current marketed products into important new indications and uses, and bring new products forward using our formulation technology platforms, supporting long-term product development and commercial success. XeriSol and XeriJect have broad application and have the potential to be utilized across a range of potential product candidates in endocrinology, neurology and other therapeutic areas.
- ***Collaborate with pharmaceutical and biotechnology companies to apply our technology platforms to enhance the formulations of their proprietary products and candidates***. We are pursuing formulation and development partnerships to apply our XeriSol and XeriJect technology platforms to broaden our revenue stream and enhance the formulation, 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 four pillars of our strategy can bring new products to market and transform the lives of patients with life-threatening 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.

Financing

We have funded our operations to date primarily with proceeds from the sale of our preferred and common stock and debt financing. We have received gross proceeds of $253.0 million from public equity offerings of our common stock (including our June 2018 initial public offering ("IPO") and our February 2019, February 2020, June 2020, March 2021 offerings), $30.0 million from a private placement of our common stock in January 2022, $104.9 million from sales of our preferred stock, $86.3 million from our June 2020 Convertible Notes offering, $63.5 million from the Amended and Restated Loan and Security Agreement (as amended, the "Amended Loan Agreement"), of which $20.0 million was repaid in June 2020 and $43.5 million was repaid in March 2022 and $100.0 million from the Hayfin Loan Agreement in March 2022.

For the three months ended March 31, 2022 and 2021, we reported net losses of $33.7 million and $18.4 million, respectively. We have not been profitable since inception, and, as of March 31, 2022, our accumulated deficit was $493.8 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, Keveyis and Recorlev;
- continue our research and development efforts;
- seek regulatory approval for new product candidates and product enhancements; and
- continue to operate as a public company.

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.

Product developments

- We are currently in Phase 1 development with product candidate XP-9164, an early-stage compound for gastroenterology. XP-9164 is intended to address unmet needs in the growing procedural gastroenterology market.
- We are developing ready-to-use glucagon for exercise-Induced hypoglycemia(EIH) in diabetes. Based on FDA interactions and expectations for a registrational program to support a mini-dose indication for Glucagon RTU in EIH, we submitted an IND in February 2022. We received FDA clearance in March 2022 and are actively planning to initiate a new phase 2 clinical program by the end of 2022 to further address the management of EIH in people with diabetes who use insulin.
- We are currently in Phase 1 development with product candidate XP-8121, an early-stage program designed to address maintenance therapy in patients with congenital or acquired hypothyroidism who require thyroid hormone replacement.
- Xeris Pharma has developed a novel, investigational fixed-ratio co-formulation of pramlintide and regular human insulin (XP-3924) to improve glycemic control in adult and pediatric patients with diabetes mellitus (T1D and T2D). Xeris' proprietary formulation technology (XeriSol™) enables the 2 peptides (pramlintide and insulin), which require different aqueous pH environments for optimal stability, to be co-formulated in a stable ready-to-use solution. The current formulation patent exists through at least Q4 2032, expected to extend to 2036 with successful prosecution of the currently pending continuation application, and through 2041-2042 with the ongoing formulation development work. We are currently seeking partners to license the development and commercialization rights to XP-3924 in the US.
- XP-0863 is a liquid formulation of diazepam for intramuscular injection being studied for the treatment of ARS. Xeris' patent protected technology XeriSol™ has been used to develop a room-temperature stable, ready-to-use, small-volume solution of diazepam for intramuscular injection delivered by an auto-injector, which will provide patients and caregivers an alternative to rectal and nasal administrations of benzodiazepines. XP-0863 is designed to address variable absorption, and suboptimal PK profiles of the currently marketed formulations of benzodiazepines, by offering a longer duration of action, consistent absorption of drug delivered through intramuscular administration, and a convenient and reliable form factor of the autoinjector. XP-0863 has been granted an orphan designation by the FDA for the treatment of ARS and Dravet syndrome in patients with epilepsy. We are currently seeking partners to license the development and commercialization rights to XP-0863 in the US.

Impact of COVID-19

The COVID-19 pandemic has presented a substantial public health and economic challenge around the world and has impacted our business operations, employees, patients and communities as well as the global economy and financial markets. The COVID-19 pandemic continues to evolve and has led to the implementation of various responses, including government-imposed quarantines, stay-at-home orders, travel restrictions, mandated business closures and other public health safety measures.

To date, we and our suppliers and third-party manufacturing partners have been able to continue to supply our products and product candidates to our patients and clinical trials respectively, and currently do not anticipate any interruptions in supply. However, while our third-party contract manufacturing partners continue to operate at or near normal levels, with enhanced safety measures intended to prevent the spread of the virus, we are seeing increasingly long lead times. While we currently do not anticipate any interruptions in our manufacturing process that would impact supply of our products and product candidates, it is possible that the COVID-19 pandemic, response efforts related to COVID-19 and its repercussions such as supply chain delays, may have an impact in the future on our third-party suppliers and contract manufacturing partners' ability to supply and/or manufacture our products and product candidates.

We believe that customer demand for our products has been adversely impacted by the COVID-19 pandemic due to the disruption the pandemic has caused in patients' normal access to healthcare as well as our sales and marketing personnel's access to customers. Initially, we suspended in-person interactions by our sales and marketing personnel in healthcare settings. We were engaging with these customers remotely, via webinar programs and virtual meetings, as we sought to continue to support healthcare professionals and patient care. As parts of the country reopened, some of our sales and marketing personnel began to reengage with a limited number of in-person interactions. However, with the emergence of variants, some areas have implemented or reintroduced restrictions and may again in the future, which may impact our sales and marketing personnel's access to customers. Remote interactions generally are not as effective as in-person interactions. In addition, several conferences and other programs at which we intended to market our products have been postponed, canceled and/or transitioned to virtual meetings. We also have revised our Gvoke patient copay assistance program to offer a copay card with a buy-down to $0 for commercially eligible patients in response to the COVID-19 pandemic.

In addition to our sales and marketing personnel, we moved quickly to transition other employees to a remote work-from-home environment excluding essential services, such as personnel in our laboratory. We have since reopened our offices on a voluntary basis

and have implemented safety measures designed to comply with applicable federal, state and local guidelines in response to the COVID-19 pandemic. We may be required to take additional actions that may impact our operations as required by applicable laws or regulations or which we determine to be in the best interests of our employees.

We have incurred operating losses since inception, and we have an accumulated deficit of $493.8 million at March 31, 2022. Although we believe that our cash, cash equivalents, investments, and expected revenue from sales of Gvoke, Keveyis, and Recorlev will enable us to fund our operating and capital expenditure requirements for at least the next 12 months, we cannot predict the impact of the COVID-19 pandemic on our future results of operations and financial condition due to a variety of factors, including the health of our employees, the ability of suppliers to continue to operate and deliver, the ability of Xeris and our customers to maintain operations, continued access to transportation resources, the changing needs and priorities of customers, any further government and/or public actions taken in response to the pandemic, the emergence of variants and acceptance of vaccines, and ultimately the length of the pandemic. As further detailed in "Liquidity and Capital Resources" below, we have relied on equity and debt financing for our funding to date and completed concurrent convertible debt and equity offerings in June/July 2020 under which we raised gross proceeds of $109.4 million and a registered direct offering in March 2021 under which we raised gross proceeds of $27.0 million. On January 3, 2022, we entered into a securities purchase agreement in connection with a private placement for aggregate gross proceeds of approximately $30.0 million. In March 2022, we entered into a Credit Agreement and Guaranty which 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 loans during the one year period immediately following the closing date. Given the impact of COVID-19 on the U.S. and global financial markets, we may be unable to access further equity or debt financing if and when needed.

We are closely monitoring the impact of the COVID-19 pandemic on all aspects of our business, including the impact on our operations and the operations of our customers, suppliers, vendors and business partners. We may take further precautionary and preemptive actions as may be required by federal, state or local authorities. In addition, we have taken and continue to take steps to try and minimize the current environment’s impact on our business, including devising contingency plans and backup resources.

We do not yet know the full extent of potential delays or impacts on our business, our clinical trials, our research programs, healthcare systems or the global economy, and we cannot presently predict the scope and severity of any potential business shutdowns or disruptions. The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition, including sales, expenses, reserves and allowances, manufacturing, clinical trials, research and development costs and employee-related costs, will depend on future developments that are highly uncertain, including as a result of new information that may emerge concerning COVID-19 and the actions taken to contain or treat it, as well as the economic impact on local, regional, national and international markets. If we, or any of the third parties with whom we engage, were to experience shutdowns or other business disruptions, our ability to conduct our business in the manner and on the timelines presently planned could be materially or negatively affected, which could have a material adverse impact on our business, results of operations and financial condition.

Components of our Results of Operations

The following discussion sets forth certain components of our statement of operations of Xeris for three months ended March 31, 2022 and 2021 as well as factors that impact those items.

Product revenue, net

Product revenue, net, represent 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 judgments 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.

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 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, with the approval and launch of Gvoke and as we have concluded ongoing clinical programs and not yet initiated any new studies. Based on FDA interactions and expectations for a registrational program to support a mini-dose indication for Glucagon RTU in EIH, we submitted an IND in February 2022. We received FDA clearance in March 2022 and are actively planning to initiate a new phase 2 clinical program by the end of 2022 to further address the management of EIH in people with diabetes who use insulin.

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 principally of compensation and related personnel costs, marketing and selling expenses, professional fees and facility costs not otherwise included in research and development expenses. We expect to continue to incur significant marketing and selling expenses in the near term related to the commercialization of Gvoke, Keveyis and Recorlev in the United States.

As a public reporting company, we have incurred greater expenses, including increased payroll, legal and compliance, accounting, insurance and investor relations costs. We expect some of these costs to continue to increase in conjunction with our anticipated growth and complexity as a public reporting company.

Other income (expense)

Other income (expense) consists primarily of interest expense related to our convertible debt, Amended Loan Agreement and Hayfin Loan Agreement, interest income earned on deposits and investments, and the change in fair value of our warrants.

Results of Operations

The following table summarizes our results of operations for the three months ended March 31, 2022 and 2021 (in thousands):

	Three Months Ended March 31,		
	2022	2021	$ Change
Product revenue, net	$ 21,910	$ 8,051	$ 13,859
Royalty, contract and other revenue	163	144	19
Total revenue	22,073	8,195	13,878
Cost and expenses:			
Cost of goods sold, excluding amortization of intangible assets	6,273	1,826	4,447
Research and development	6,250	4,032	2,218
Selling, general and administrative	35,913	19,077	16,836
Amortization of intangible assets	2,711	—	2,711
Total cost and expenses	51,147	24,935	26,212
Loss from operations	(29,074)	(16,740)	(12,334)
Other income (expense):			
Interest and other income	68	100	(32)
Interest expense	(3,521)	(1,791)	(1,730)
Change in fair value of warrants	1,221	20	1,201
Change in fair value of contingent considerations	(2,816)	—	(2,816)
Total other expense	(5,048)	(1,671)	(3,377)
Net loss before benefit from income taxes	(34,122)	(18,411)	(15,711)
Benefit from income taxes	408	—	408
Net loss	$ (33,714)	$ (18,411)	$ (15,303)

Product revenue, net

Product revenue, net were $21.9 million and $8.1 million for the three months ended March 31, 2022 and 2021, respectively. The $13.9 million increase was the result of higher sales of Gvoke and sales attributable to the products, Keveyis and Recorlev, that we acquired in fourth quarter 2021.

Cost of goods sold

Cost of goods sold were $6.3 million and $1.8 million for the three months ended March 31, 2022 and 2021, respectively. An increase in sales and product mix comprised $3.1 million and $0.8 million of the change.

Research and development expenses

Research and development expenses increased $2.2 million for the three months ended March 31, 2022 when compared to the three months ended March 31, 2021. The increase was primarily driven by higher pharmaceutical process development and clinical service costs across multiple programs of $2.0 million.

Selling, general and administrative expenses

Selling, general and administrative costs increased $16.8 million for the three months ended March 31, 2022 when compared to the three months ended March 31, 2021. We incurred $11.5 million of increased commercial-related costs, including an increase to our sales force and increased commercial support for Gvoke, Keveyis and the launch of Recorlev. In addition, $2.3 million of the increase

related to the acquisition of Strongbridge, primarily restructuring and related employee costs. The remaining change was due to an increase in general expenses given the growth of the Company.

Amortization of intangible assets

For the three months ended March 31, 2022, amortization of intangible assets was $2.7 million from Keveyis and the IPR&D product Recorlev acquired from the Acquisition and subsequently approved by the FDA on December 30, 2021.

Other income (expense)

For the three months ended March 31, 2022, interest expense increased $1.7 million in comparison to the three months ended March 31, 2021. The higher interest expense in 2022 was primarily due to a loss on extinguishment of debt of $1.3 million.

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. In June 2018, we completed our IPO of 6,555,000 shares of our common stock at a price of $15.00 per share for aggregate net proceeds of $88.9 million after deducting underwriting discounts and commissions as well as other equity offering expenses. In February 2019, we completed an equity offering and sold an aggregate of 5,996,775 shares of common stock at a price of $10.00 per share. Net proceeds from this equity offering were $55.5 million after deducting underwriting discounts and commissions as well as other equity offering expenses. In September 2019, we entered into the Amended Loan Agreement that provided for term loans of up to an aggregate of $85.0 million, of which $60.0 million was drawn in September 2019 and of which $20.0 million was repaid in June 2020. Additional tranches of $15.0 million (the "Term B Loan") and $10.0 million (the “Term C Loan”) were contingent on achievement of certain revenue targets which were not achieved. In August 2019, we filed a shelf registration statement on Form S-3 with the SEC, which covered 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. We simultaneously entered into a Sales Agreement with Jefferies LLC, as sales agent, to provide for the offering, issuance and sale by us of up to $50.0 million of our common stock from time to time in "at-the-market" offerings under the shelf. As of October 5, 2021, the acquisition closing date, we have sold an aggregate of 204,427 shares of common stock in at-the-market offerings under the shelf for gross proceeds of $1.8 million. The shelf ceased to be available upon the consummation of the Transactions. 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 February 2020, we completed an equity offering and sold 10,299,769 shares of common stock. Net proceeds from this equity offering were $39.8 million after deducting underwriting discounts and commissions as well as other equity offering expenses. In June 2020, we completed a public notes offering and sold $86.3 million aggregate principal amount of 5.00% Convertible Senior Notes, including $11.3 million pursuant to the underwriters' option to purchase additional notes which was fully exercised in July 2020. Concurrently with the public notes offering, in June 2020, we completed an equity offering and sold 8,510,000 shares of common stock, including 1,110,000 shares pursuant to the underwriters’ option to purchase additional shares of common stock which was also fully exercised in July 2020. Net proceeds from both June 2020 offerings (including the net proceeds from the exercise of the underwriters' over-allotment options in July 2020) were $102.8 million after deducting underwriting discounts and commissions as well as other offering expenses. During the second half of 2020, $39.1 million in principal amount of Convertible Notes were converted into 13,171,791 shares of our common stock. In March 2021, we completed a registered direct offering of 6,553,398 shares of our common stock, the net proceeds of which were $26.9 million. As of March 31, 2022, the outstanding balance of Convertible Notes was $47.2 million. In October 2020, we entered into a fourth amendment to the Amended Loan Agreement which provided for an additional $3.5 million term loan which was drawn in November 2020. On January 2, 2022, we entered into a securities purchase agreement in connection with the Private Placement with Armistice for aggregate gross proceeds of approximately $30.0 million and completed the transaction on January 3, 2022.

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 “New Lenders”) and Hayfin Services LLP, as administrative agent for the New 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 New Lenders to extend $100.0 million in term loans (the “Initial Loan”) to us 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 (the “Delayed Draw Term Loans” and, together with the Initial Loan, the "Loans") in no more than three drawings of no less than $10.0 million per drawing subject to us being in pro forma compliance with the financial covenants and other conditions set forth therein. In conjunction with the execution of the Hayfin Loan Agreement, the Amended 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 Amended Loan Agreement in full, the proceeds will otherwise be used for general corporate purposes. After repayment, the Loans may not be re-borrowed.

Capital Resources and Funding Requirements

We have incurred operating losses since inception, and we have an accumulated deficit of $493.8 million at March 31, 2022. Based on our current operating plans and existing working capital at March 31, 2022, 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, Keveyis and Recorlev 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, Keveyis and Recorlev, 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:

- the successful integration of the Acquisition and achievement of expected revenue and synergies
- the costs of commercialization activities, including product marketing, sales and distribution;
- our degree of success in commercializing Gvoke, Keveyis and Recorlev;
- 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.

We may not be able to successfully integrate and combine the businesses of Xeris and Strongbridge following the completion of the Transactions and we may not realize the anticipated benefits from the Transactions. Also, as we continue the marketing and selling of Gvoke, Keveyis and Recorlev, 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. 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, Keveyis and Recorlev. Market volatility resulting from the COVID-19 pandemic or other factors could also adversely impact our ability to access capital as and when needed. The issuance of equity securities may result in dilution to stockholders. If we raise additional funds through the issuance of additional debt, which may have rights, preferences and privileges senior to those of our common stockholders, the terms of the debt could impose significant restrictions on our operations. The failure to raise funds as and when needed could have a negative impact on our financial condition and ability to pursue our business strategies. If additional funding is not secured when required, we may need to delay or curtail our operations until such funding is received, which would have a material adverse impact on our business prospects and results of operations.

Cash Flows

	Three Months Ended March 31,	
(**in thousands**)	**2022**	**2021**
Net cash used in operating activities	$ (48,409)	$ (23,956)
Net cash provided by investing activities	6,716	26,301
Net cash provided by financing activities	78,194	26,661

Operating activities

Net cash used in operating activities was $48.4 million for the three months ended March 31, 2022, compared to $24.0 million for the three months ended March 31, 2021. The increase in net cash used in operating activities was primarily driven by a change in working capital and an increase in net losses due to higher personnel related costs from increased headcount and restructuring costs related to Strongbridge acquisition. 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."

Investing activities

Net cash provided by investing activities was $6.7 million for the three months ended March 31, 2022, compared to $26.3 million for the three months ended March 31, 2021. The decrease in cash provided by investing activities in 2022 was primarily due to a less number of investments maturing or being sold in the current period.

Financing activities

Net cash provided by financing activities was $78.2 million for the three months ended March 31, 2022, compared to $26.7 million for the three months ended March 31, 2021. The increase was primarily due to the net proceeds of $30.0 million from the January 2022 private placement of our common stock with an affiliate of Armistice, proceeds net of debt issuance costs of $92.9 million from the March 2022 Hayfin Loan Agreement, partially offset by the payoff of the principles on the Amended Loan Agreement of $43.5 million in March 2022, as compared to the proceeds of $27.0 million from the March 2021 registered direct offering of our common stock.

CRITICAL ACCOUNTING POLICIES AND USE OF ESTIMATES AND ASSUMPTIONS

Our Annual Report on Form 10-K for the year ended December 31, 2021 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, 2021.

NEW ACCOUNTING STANDARDS

Refer to "Note 2 - Summary of Significant Accounting Policies", 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, principal risk associated with interest rate and foreign currency exchange rate fluctuations.

Interest Rate Risk

Cash and Cash Equivalents and Investments—We are exposed to the risk of interest rate fluctuations on the interest income earned on our cash and cash equivalents and investments. A hypothetical one-percentage point increase or decrease in interest rates applicable to our cash and cash equivalents and investments outstanding at March 31, 2022 would increase or decrease interest income by approximately one million on an annual basis.

Long-term Debt—Our interest rate risk relates primarily to U.S. dollar SOFR-indexed borrowings. Based on our outstanding borrowings pursuant to the Hayfin Loan Agreement at March 31, 2022, interest is incurred at a floating per annum rate in an amount equal to the sum of (i) 9.0% (or 8.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate) plus (ii) the greater of (x) (1) CME Group Benchmark Administration Limited (CBA) Term SOFR (or the replacement rate, if applicable) if CBA Term SOFR is greater than 1.00% plus 0.26161% or (2) 1.00% if CME Term SOFR is less than 1.00% and (y) one percent (1.00%) per annum (or 2.0% per annum if the replacement rate in effect is the Wall Street Journal Prime Rate). Interest on the Convertible Notes is assessed at a fixed rate of 5.0% annually and therefore does not subject us to interest rate risk.

Foreign Exchange Risk

We contract with contract 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. As of March 31, 2022, we had immaterial liabilities denominated in the Australian Dollar. Net foreign currency gains and losses did not have a material effect on our results of operations for the three months ended March 31, 2022.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and 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 principal executive officer and principal financial officer have concluded that the disclosure controls and procedures were effective as of March 31, 2022 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 U.S. 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 principal executive and principal financial officers, as appropriate, to allow timely decisions regarding 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, 2022 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

Investing in our common stock involves a high degree of risk. Careful consideration should be given to the following risk factors, in evaluating us and our business. If any of the following risks and uncertainties actually occurs, our business, prospects, financial condition and results of operations could be materially and adversely affected. The risks summarized and described below are not intended to be exhaustive and are not the only risks facing us. New risk factors can emerge from time to time, and it is not possible to predict the impact that any factor or combination of factors may have on our business, prospects, financial condition and results of operations.

Risks Related to the Impact of the COVID-19 Pandemic

Our business may be adversely affected by the ongoing coronavirus pandemic.

Our business could be adversely affected by health epidemics in regions where we have business activities and could cause significant disruption in the operations of third-party manufacturers and contract research organizations ("CROs") upon whom we rely, and for which we may not have adequate insurance coverage. For example, beginning in late 2019, the outbreak of a novel strain of virus named SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), or coronavirus, which causes coronavirus disease 2019, or COVID-19, evolved into a global pandemic. The coronavirus spread globally, and the impact of the outbreak is continually evolving, particularly in light of new variants of COVID-19.

As a result of the ongoing COVID-19 pandemic, we may experience disruptions that could severely impact our business, preclinical studies and clinical trials, including:

- We believe that the COVID-19 pandemic has had, and may continue to have, an adverse impact on demand for certain of our products due to government-imposed quarantines, stay-at-home orders, travel restrictions, mandated business closures and other public health safety measures which may result in patients not visiting their healthcare providers or their pharmacies to get their prescriptions filled. Initially, we suspended in-person interactions by our sales and marketing personnel in healthcare settings. We were engaging with these customers remotely, via webinar programs and virtual meetings, as we sought to continue to support healthcare professionals and patient care. As parts of the country reopened, some of our sales and marketing personnel began to reengage with a limited number of in-person interactions. With the emergence of variants and, in some areas, lack of acceptance of vaccines, some areas implement or reintroduce restrictions, which may impact our sales and marketing personnel's access to customers. Remote interactions may be less effective as in-person interactions. In addition, several conferences and other programs at which we intended to market our products have been postponed, canceled and/or transitioned to virtual meetings. In addition, due to the prioritization of healthcare resources toward pandemic efforts, even remote interactions may not be possible.
- We currently rely on third-party suppliers and contract manufacturing organizations ("CMOs") for the manufacturing of Gvoke, Keveyis, and Recorlev, as well as to perform third-party logistics functions, including warehousing and distribution of Gvoke, Keveyis, and Recorlev. In addition, we rely on third parties to perform quality testing and supply other goods and services to run our business. Certain of our third party suppliers in our supply chain for materials have been adversely impacted by restrictions resulting from the COVID-19 pandemic or supply chain issues, including staffing shortages, production slowdowns and disruptions in delivery systems, and may continue to be in the future such that our supply chain may be disrupted, limiting our ability to manufacture commercial quantities.
- In March 2020, we closed our offices and requested that most of our personnel, including all of our administrative employees, work remotely, restricted on-site staff to only those personnel and contractors who must perform essential activities that must be completed on-site and limited the number of staff in any given location. We have since reopened our offices on a voluntary basis and have implemented safety measures designed to comply with applicable federal, state and local guidelines in response to the COVID-19 pandemic. Our increased reliance on personnel working from home may negatively impact productivity, or disrupt, delay, or otherwise adversely impact our business. Further, this could increase our cybersecurity risk, create data accessibility concerns, and make us more susceptible to communication disruptions, any of which could adversely impact our business operations or delay necessary interactions with local and federal regulators, ethics committees, manufacturing sites, research or clinical trial sites and other important agencies and contractors.
- Although essential personnel in our laboratory currently remain on-site, they and other employees and contractors conducting research and development activities on our behalf may not be able to access our laboratory or conduct such activities for an extended period of time in the event of the closure of our offices or the offices of our contractors and/or the possibility that governmental authorities further modify current restrictions. As a result, this could delay timely completion of preclinical activities.

- Health regulatory agencies globally may experience disruptions in their operations as a result of the coronavirus pandemic. The FDA and comparable foreign regulatory agencies may have slower response times or be under-resourced to continue to monitor our clinical trials and, as a result, review, inspection, and other timelines may be materially delayed. It is unknown how long these disruptions could continue, were they to occur. Any elongation or deprioritization of our clinical trials or delay in regulatory review resulting from such disruptions could materially affect the development and study of our product candidates. For example, regulatory authorities may require that we not distribute a product candidate lot until the relevant agency authorizes its release. Such release authorization may be delayed as a result of the coronavirus pandemic and could result in delays to our clinical trials.
- The trading prices for our common shares and other biopharmaceutical companies have been highly volatile as a result of the coronavirus pandemic. As a result, we may face difficulties raising further capital through sales of our common shares or convertible debt or such sales may be on unfavorable terms. In addition, a recession, depression or other sustained adverse market event resulting from the spread of the coronavirus could materially and adversely affect our business and the value of our common shares.

Since the beginning of the COVID-19 pandemic, three vaccines for COVID-19 have received Emergency Use Authorization by the FDA and two of those later received marketing approval. Additional vaccines may be authorized or approved in the future. The resultant demand for vaccines and potential for manufacturing facilities and materials to be commandeered under the Defense Production Act of 1950, or equivalent foreign legislation, may make it more difficult to obtain materials or manufacturing slots for the products needed for our clinical trials and/or commercial product, which could lead to delays in these trials and/or issues with our commercial supply.

The coronavirus pandemic continues to rapidly evolve. The ultimate impact of the coronavirus pandemic on our business operations is highly uncertain and subject to change and will depend on future developments, which cannot be accurately predicted, including the duration of the pandemic, the emergence of new variants, the acceptance and availability of vaccines in various geographies, additional or modified government actions, new information that will emerge concerning the severity and impact of COVID-19 and the actions taken to contain coronavirus or address its impact in the short and long term, among others. We do not yet know the full extent of potential delays or impacts on our business, our clinical trials, our research programs, healthcare systems or the global economy. We will continue to monitor the situation closely.

Risks Related to our Financial Position and Need for Financing

Risks Related to Our Operating History

As a company, we have a limited operating history and limited experience commercializing pharmaceutical products and have incurred significant losses since inception. We expect to incur losses over the next few years and may not be able to achieve or sustain revenues or profitability in the future.

Historically, we have funded our operations primarily through private placements of convertible preferred stock, public offerings of common stock and convertible notes, and debt issuances. We commercially launched Gvoke PFS in November 2019, Gvoke HypoPen in July 2020, Recorlev in January 2022 and Gvoke Kit in March 2022. Strongbridge commercially launched Keveyis in April 2017. We are in the early stages of commercializing our biopharmaceutical products and have a limited operating history. Biopharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. Accordingly, you should consider our prospects in light of the costs, uncertainties, delays and difficulties frequently encountered by companies prior to and at the early stages of commercialization of any product candidates, especially biopharmaceutical companies such as ours. Any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history or a history of successfully commercializing biopharmaceutical products. We may encounter unforeseen expenses, difficulties, complications, delays and other known or unknown factors in achieving our business objectives. We will need to successfully execute our commercialization strategy and may not be successful in doing so. We expect our financial condition and operating results to continue to fluctuate significantly from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. Accordingly, you should not rely upon the results of any quarterly or annual periods as indications of future operating performance.

We have incurred significant losses in every fiscal year since inception. For the three months ended March 31, 2022 and 2021, we reported a net loss of $33.7 million and $18.4 million, respectively. In addition, our accumulated deficit as of March 31, 2022 was $493.8 million.

We expect to continue to incur significant operating expenses as we continue the commercialization of Gvoke, Keveyis and Recorlev, develop, enhance and commercialize new products, and incur additional operational and reporting costs associated with being a public company. In particular, we anticipate that we will continue to incur significant expenses as we:

- execute our Gvoke, Keveyis and Recorlev commercial strategies in the U.S.;
- continue our research and development efforts;
- seek regulatory approval for new product candidates and product enhancements;

- integrate the combined company; and
- continue to operate as a public company.

Gvoke was approved by the FDA for the treatment of severe hypoglycemia in pediatric and adult patients with diabetes ages two years and above on September 10, 2019. In February 2021 the European Commission ("EC") granted marketing authorization and in April 2021 the United Kingdom's Medicines and Healthcare products Regulatory Agency approved Ogluo for the treatment of severe hypoglycemia in adults, adolescents, and children aged two years and over with diabetes mellitus. On July 19, 2021, we announced that we had entered into an exclusive agreement with Tetris Pharma Limited ("Tetris") for the commercialization of Ogluo in the European Economic Area, United Kingdom, and Switzerland (the "Territory"). Under the terms of the applicable agreements, Xeris will be responsible for product supply and Tetris will be responsible for commercialization of Ogluo in the Territory. Tetris launched Ogluo in the United Kingdom in December 2021. Our ability to generate revenue from Gvoke, Keveyis and Recorlev and our product candidates and to transition to profitability and generate positive cash flows is uncertain and depends on the successful commercialization of Gvoke, Keveyis and Recorlev and any of our product candidates for which we obtain marketing approval. Many of our product candidates are still in development. Successful development and commercialization will require achievement of key milestones, including completing clinical trials and obtaining marketing approval for our product candidates, manufacturing, marketing and selling those products for which we, or any of our future collaborators, may obtain marketing approval, satisfying any post-marketing requirements and obtaining reimbursement for our products from private insurance or government payors. Because of the uncertainties and risks associated with these activities, we are unable to accurately predict the timing and amount of revenues, and if or when we might achieve profitability. We and any future collaborators may never succeed in these activities and, even if we or any future collaborators do, we may never generate revenues that are large enough for us to achieve profitability. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis.

Our failure to become and remain profitable would depress the market price of our common stock and could impair our ability to raise capital, expand our business, diversify our product offerings or continue our operations. If we continue to suffer losses as we have in the past, investors may not receive any return on their investment and may lose their entire investment.

Although we generate revenue from Gvoke, Keveyis, Recorlev and Ogluo, we have not yet generated revenue from any of our current or future product candidates, and may never be profitable.

Our ability to become profitable depends upon our ability to generate revenue. Our ability to generate revenue from Gvoke, Keveyis and Recorlev, and our product candidates, if successfully developed and approved, depends on a number of factors, including, but not limited to, our ability to:

- obtain commercial quantities of our products at acceptable cost levels;
- successfully manage inventory;

  sell and distribute our products on terms acceptable to us;
- achieve an adequate level of market acceptance of our products in the medical community and with third-party payors, including placement in accepted clinical guidelines for the conditions for which our product candidates are intended to target;
- obtain and maintain third-party coverage and adequate reimbursement for our products;
- launch and commercialize our products utilizing our own sales force or by entering into partnership or co-promotion arrangements with third parties; and
- successfully develop and obtain marketing approval for our product candidates.

We have incurred and expect to continue to incur significant sales and marketing costs as we commercialize Gvoke, Keveyis and Recorlev. Regardless of these expenditures, our products and our product candidates, if approved, may not be commercially successful. Although we generate revenue from Gvoke, Keveyis and Recorlev, if we are unable to generate sufficient product revenue, we will not become profitable and may be unable to continue operations without continued funding.

Risks Related to Future Financial Condition

We may require additional capital to sustain our business, and this capital may cause dilution to our stockholders and might not be available on terms favorable to us, or at all, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.

Biopharmaceutical development is a time consuming, expensive and uncertain process that takes years to complete. We are incurring significant commercialization expenses related to product sales, marketing, manufacturing, packaging and distribution of Gvoke, Keveyis and Recorlev and expect to continue to incur such expenses for our products, as well as for any of our product candidates, if approved. We expect to require additional capital to complete the clinical trials associated with our product candidates and begin commercialization efforts, if approved. Accordingly, we may need additional funding in connection with our continuing operations. In the future, if we are unable to raise capital when needed or on attractive terms, we may be forced to delay, reduce or eliminate our research and development programs and/or sales and marketing activities. Market volatility resulting from the ongoing COVID-19 pandemic and geopolitical instability resulting from the ongoing military conflict between Russia and Ukraine, rising interest rates, the tightening of lending standards or other factors could also adversely impact our ability to access capital as and when needed.

We may be required to or choose to obtain further funding through public equity offerings, debt financings, royalty-based financing arrangements, collaborations and licensing arrangements or other sources. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing obtained by us would be senior to our common stock, would likely cause us to incur interest expense, and could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may increase our expenses and make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions and in-licensing opportunities. Under our existing credit facility dated March 8, 2022, with the lenders from time to time parties thereto (the "New Lenders"), Hayfin Services LLP, as administrative agent for the New Lender, Xeris Pharmaceuticals, Inc. and Xeris Biopharma Holdings, Inc. (the "Hayfin Loan Agreement"), we are restricted in our ability to incur additional indebtedness and to pay dividends. Any additional debt financing that we may secure in the future could include similar or more restrictive covenants relating to our capital raising activities, buying or selling assets and other financial and operational matters, which may make it more difficult for us to obtain additional capital, manage our business and pursue business opportunities. We may also be required to secure any such debt obligations with some or all of our assets. For example, our Hayfin Loan Agreement is secured by substantially all of our property and assets, including our intellectual property assets, subject to certain exceptions.

If we raise additional funds through collaborations or marketing, distribution or licensing, or royalty-based financing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams or product candidates or grant licenses on terms that may not be favorable to us. Securing financing could require a substantial amount of time and attention from our management and may divert a disproportionate amount of their attention away from day-to-day activities, which may adversely affect our management’s ability to oversee the commercialization of our products and development and commercialization, if approved, of our product candidates. It is also possible that we may allocate significant amounts of capital toward solutions or technologies for which market demand is lower than anticipated and, as a result, abandon such efforts. Any of these negative developments could have a material adverse effect on our business, operating results, financial condition and common stock price.

We may not have cash available to us in an amount sufficient to enable us to make interest or principal payments on our indebtedness when due, or repurchase our Convertible Notes for cash following a fundamental change, and our existing and future indebtedness may limit our ability to repurchase the Convertible Notes.

On June 30, 2020, we completed a public offering of $86.3 million aggregate principal amount of our 5.00% Convertible Senior Notes due 2025 (the "Convertible Notes"), including $11.3 million pursuant to the underwriters' option to purchase additional notes which was exercised in July 2020. A total principal amount of $39.1 million of Convertible Notes converted into equity in the second half of 2020. As of March 31, 2022, the outstanding balance of Convertible Notes was $47.2 million. The Convertible Notes are governed by the terms of a base indenture for senior debt securities dated June 30, 2020 (the “Base Indenture”), as supplemented by the first supplemental indenture thereto dated June 30, 2020 and the second supplemental indenture thereto dated October 5, 2021 ("the Supplemental Indentures" and together with the Base Indenture, the "Indenture"), each between us and U.S. Bank National Association, as trustee. Failure to satisfy our current and future debt obligations under the Indenture could result in an event of default and, as a result, all of the amounts outstanding could immediately become due and payable. In the event of an acceleration of amounts due under the Indenture as a result of an event of default, we may not have sufficient funds or may be unable to arrange for additional financing to repay our indebtedness.

Noteholders may require us to repurchase their Convertible Notes following a fundamental change at a cash repurchase price generally equal to the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, if any. A fundamental change includes certain acquisition transactions and the failure of our common stock to be listed on the Nasdaq Global Select Market or certain similar national securities exchanges. We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the Convertible Notes. In addition, applicable law, regulatory authorities and the agreements governing our existing and future indebtedness may restrict our ability to repurchase the Convertible Notes. Our failure to repurchase the Convertible Notes when required will constitute a default under the Indenture that governs the Convertible Notes. A default under the Indenture or the fundamental change itself could also lead to a default under agreements governing our other existing or future indebtedness, which

may result in that other indebtedness becoming immediately payable in full. For instance, a fundamental change without lender consent would constitute an event of default under our Hayfin Loan Agreement. We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the Convertible Notes.

In addition, we have $100.0 million outstanding under our Hayfin Loan Agreement as of March 31, 2022 and up to an additional $50 million in delayed draw term loans. All obligations under our Hayfin Loan Agreement are secured by substantially all of our property and assets, including our intellectual property assets, subject to certain limited exceptions. The term loans and the Convertible Notes may create additional financial risk for us, particularly if our business or prevailing financial market conditions are not conducive to paying off or refinancing our outstanding debt obligations at maturity. Failure to satisfy our current and future debt obligations under our Hayfin Loan Agreement could result in an event of default and, as a result, our lenders could accelerate all amounts due. Events of default also include our failure to comply with customary affirmative and negative covenants as well as a default under any indenture or other agreement governing convertible indebtedness permitted by the Hayfin Loan Agreement, including the Indenture. The Hayfin Loan Agreement contains customary representations and warranties, events of default and affirmative and negative covenants, including, among others, covenants that limit or restrict our ability to incur 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. In the event of an acceleration of amounts due under our Hayfin Loan Agreement as a result of an event of default, we may not have sufficient funds or may be unable to arrange for additional financing to repay our indebtedness. In addition, our lenders could seek to enforce their security interests in any collateral securing such indebtedness.

Our PPP Loan, which we repaid in full in June 2020, was subject to the terms and conditions applicable to loans administered by the SBA under the CARES Act, and we may be subject to an audit or enforcement action related to the PPP Loan.

On April 21, 2020, we entered into the U.S. Small Business Administration (the "SBA") PPP Note (the "Note") with Silicon Valley Bank (the “PPP Lender”) for a loan in the amount of $5.1 million (the “PPP Loan”) enabled by the Coronavirus Aid, Relief and Economic Security Act of 2020 (the "CARES Act"). We received the full amount of the PPP Loan on April 22, 2020. On May 4, 2020, we repaid $0.9 million of the PPP Loan. In June 2020, we repaid the remaining amount outstanding under the PPP Loan in connection with the concurrent Convertible Notes and equity offerings.

We may be subject to CARES Act-specific lookbacks and audits that may be conducted by other federal agencies, including several oversight bodies created under the CARES Act. These bodies have the ability to coordinate investigations and audits and refer matters to the Department of Justice for civil or criminal enforcement and other actions. Complying with such SBA audit could divert management resources and attention and require us to expend significant time and resources, which could have an adverse effect on our business, financial condition and results of operations.

Greater than expected product returns may exceed our reserve for returns.

We do not have extensive history of product returns and uses various factors to estimate the provision for returns, including the launch date of products, third-party industry data for comparable products in the market and estimated channel inventory data. In a reporting period, we may decide to constrain revenue for product returns based on information from various sources, including channel inventory levels, inventory dating, prescription data, the expiration dates of product, price changes of competitive products and introductions of generic products. While we believe that our returns reserve is sufficient to avoid a significant reversal of revenue in future periods, any significant increase in returns that exceeds our reserves could adversely affect our revenue and operating results.

Risks Related to the Commercialization and Marketing of our Products and Product Candidates

Risks Related to Commercialization and Marketing

Our business depends entirely on the commercial success of our products and product candidates. Even if approved, our product candidates may not be accepted in the marketplace and our business may be materially harmed.

To date, we have expended significant time, resources and effort on the development of our product candidates, and a substantial portion of our resources recently has been and will continue to be focused on launching, marketing and commercializing our products, Gvoke, Keveyis and Recorlev, in the United States. Our business and future success are substantially dependent on our ability to generate and increase product revenue in the near term. Our estimates of the potential market opportunity for Gvoke, Keveyis, Recorlev and our product candidates include several key assumptions of the current market size and current pricing for commercially available products and are based on industry and market data obtained from industry publications, studies conducted by us, our industry knowledge, third-party research reports and other surveys. While we believe that our internal assumptions are reasonable, if any of these assumptions proves to be inaccurate, the actual market for our product and product candidates could be smaller than our estimates of our potential market opportunity. Our product candidates are in various stages of development and subject to the risks of failure inherent in developing drug products. Any delay or setback in the regulatory approval, product launch, commercialization or distribution of any of our product candidates will adversely affect our business. There is no guarantee that the infrastructure, systems, processes, policies, relationships and materials we have built for the commercialization of Gvoke, Keveyis and Recorlev will be sufficient for us to achieve success at the levels we expect. Further, our products may contain undetected manufacturing defects, including mislabeling, which might require product replacement, re-labeling or product recalls, which could further harm our business. See the section entitled, "*Business — Coverage and Reimbursement*".

Even if all regulatory approvals are obtained, the commercial success of our products and product candidates will depend on gaining market acceptance among physicians, patients, patient advocacy groups, healthcare payors and the medical community. The degree of market acceptance of our products and product candidates will depend on many factors, including:

- the scope of regulatory approvals, including limitations or warnings contained in a product's regulatory-approved labeling;
- our ability to produce, through a validated process, sufficiently large quantities of our products to permit successful commercialization;
- our ability to establish and maintain commercial manufacturing arrangements with third-party manufacturers;
- our ability to build and maintain sales, distribution and marketing capabilities sufficient to launch commercial sales of our products;
- the acceptance in the medical community of the potential advantages of the products, including with respect to our efforts to increase adoption of our products by patients and healthcare providers;
- the incidence, prevalence and severity of adverse side effects of our products;
- the willingness of physicians to prescribe our products and of the target patient population to try these therapies;
- the price and cost-effectiveness of our products;
- the availability of sufficient third-party coverage and reimbursement, including the extent to which each product is approved for use at, or included on formularies of, hospitals and managed care organizations;
- any negative publicity related to our or our competitors' products or other formulations of products that we administer, including as a result of any related adverse side effects;
- alternative treatment methods and potentially competitive products;
- the potential advantages of our products over existing and future treatment methods; and
- the strength of our sales, marketing and distribution support.

Additionally, if, after marketing approval of any of our products or product candidates, we or others later identify undesirable or unacceptable side effects caused by such products, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of such product, require us to take our approved product off the market or ask us to voluntarily remove the product from the market;
- regulatory authorities may require the addition of labeling statements, specific warnings, a contraindication or field alerts to physicians and pharmacies;
- regulatory authorities may impose conditions under a risk evaluation and mitigation strategy ("REMS") including distribution of a medication guide to patients outlining the risks of such side effects or imposing distribution or use restrictions;
- we may be required to change the way a product is administered, conduct additional clinical trials or change the labeling of the product;
- we may be subject to limitations on how we may promote the product;
- sales of the product may decrease significantly;
- we may be subject to litigation or products liability claims; and
- our reputation may suffer.

If our product candidates are approved but do not achieve an adequate level of acceptance by physicians, patients and third-party payors, we may never generate significant revenue from these products, and our business, financial condition and results of operations may be materially harmed. Even if our products achieve market acceptance, we may not be able to maintain that market acceptance over time if new therapeutics are introduced that are more favorably received than our products or that render our products obsolete, or if significant adverse events occur. If our products do not achieve and maintain market acceptance, we will not be able to generate sufficient revenue from product sales to attain profitability.

If we are unable to establish or do not maintain sufficient marketing, sales and distribution capabilities or enter into agreements with third parties to market, sell and distribute our products on terms acceptable to us, we may not be able to generate product revenue and our business, results of operations, and financial condition will be materially adversely affected.

We have developed our commercial infrastructure for the sales, marketing and distribution of Gvoke, Keveyis, and Recorlev. In order to successfully commercialize our product candidates, we will need to maintain and may need to expand our marketing, sales, distribution, managerial and other non-technical capabilities and/or make arrangements with third parties to perform some or all of these services. We have established and recently expanded our sales force to market our products in the United States. There are significant expenses and risks involved with establishing our own sales and marketing capabilities, including our ability to hire, retain and appropriately incentivize qualified individuals, generate sufficient sales leads, obtain access to an adequate number of physicians and persuade them to prescribe our products and any product candidates that receive regulatory approval, provide adequate training to sales and marketing personnel, and effectively manage a geographically dispersed sales and marketing team. Any failure or delay in our ability to maintain or expand, if needed, our internal sales, marketing and distribution capabilities would adversely impact the commercialization of Gvoke, Keveyis and Recorlev and the launch and commercialization of our product candidates, if approved.

We cannot be sure that we will be able to recruit, hire and retain a sufficient number of sales representatives or that they will be effective at promoting our products. In addition, we will need to commit significant additional management and other resources to establish and grow our sales organization. We may not be able to achieve the necessary development and growth in a cost-effective manner or realize a positive return on our investment. We will also have to compete with other companies to recruit, hire, train and retain sales and marketing personnel.

In the event that we are unable to effectively deploy our sales organization or distribution strategy on a timely and efficient basis, if at all, the commercialization of our product candidates could be delayed which would negatively impact our ability to generate product revenue. For example, as a result of the COVID-19 pandemic, we have had to limit in-person interactions and engage with many healthcare professionals remotely, which may be less effective. In addition, due to the prioritization of healthcare resources toward pandemic efforts, even remote interactions may not be possible.

We intend to leverage the sales and marketing capabilities that we are establishing for Gvoke to commercialize additional product candidates for the management of other hypoglycemic conditions, if approved by the FDA, in the United States. If we are unable to do so for any reason, we would need to expend additional resources to establish commercialization capabilities for those product candidates, if approved.

In addition, we intend to establish collaborations to commercialize our product candidates outside the United States, if approved by the relevant regulatory authorities. Therefore, our future success will depend, in part, on our ability to enter into and maintain collaborative relationships for such efforts, the collaborator’s strategic interest in the product and such collaborator’s ability to successfully market and sell the product. We may not be able to establish or maintain such collaborative arrangements, or if we are able to do so, such collaborators may not have effective sales forces. To the extent that we depend on third parties for marketing and distribution, any revenues we receive will depend upon the efforts of such third parties, and such efforts may not be successful.

Risks Related to Third-Parties Actions and Market Acceptance

Our reliance on third-party suppliers, including single-source suppliers, and a limited number of options for alternate sources for Gvoke, Keveyis, and Recorlev or our product candidates could harm our ability to develop our product candidates or to commercialize Gvoke, Keveyis, Recorlev or any product candidates that are approved.

We do not currently own or operate any manufacturing facilities for the production of Gvoke, Keveyis, Recorlev for commercial supply or our product candidates for use in clinical trials. We rely on third-party suppliers to manufacture and supply our products and our product candidates. For Gvoke, we currently rely on a number of single-source suppliers, such as Bachem Americas, Inc. ("Bachem") for active pharmaceutical ingredient ("API"), Pyramid Laboratories Inc. ("Pyramid") for drug product and SHL Pharma, LLC ("SHL Pharma") for auto-injector and final product assembly, and we have entered into several supply agreements including with Bachem, Pyramid and SHL Pharma. Taro Pharmaceuticals U.S.A., Inc. ("Taro") produces all of our requirements for Keveyis. The agreement with Taro may extend beyond the orphan exclusivity period unless terminated by either party pursuant to the terms of the agreement. If terminated by Taro at the conclusion of the orphan exclusivity period, we will need to find a new third party to manufacture Keveyis or manufacture the product ourselves. Similarly for Recorlev, we rely on a number of single-source suppliers, such as Regis Technologies, Inc. for API and Xcelience, LLC ("Lonza") for finished drug product. We rely on other third parties to manufacture our product candidates for use in clinical trials. If any of these vendors is unable or unwilling to meet our future requirements, we may not be able to manufacture and/or supply our products in a timely manner. Our current arrangements with these manufacturers are terminable by such manufacturers, subject to certain notice provisions.

Our third-party suppliers may not be able to produce sufficient inventory to meet commercial demand in a timely manner, or at all, and we are experiencing significantly longer lead times for certain components and materials used in the production of our products and product candidates. Our third-party suppliers may not be required to provide us with any guaranteed minimum production levels or have dedicated capacity for our products. As a result, there can be no assurances that we will be able to obtain sufficient quantities of products, components or other key materials in the future, which could have a material adverse effect on our business as a whole. For example, the extent to which the COVID-19 pandemic and its effects impact our and our suppliers' ability to procure sufficient supplies for the manufacture of our commercial products or our product candidates continues to evolve and there can be no assurances that there will not be disruptions to supply in the future. Any disruption to the facilities or operations of our third-party suppliers resulting from weather-related events, epidemics, including the global health concerns such as the COVID-19 pandemic, fire, acts of terrorism, political instability or any other cause could materially impair our ability to manufacture our products and to distribute our products to customers. For example, we have a global supply chain and manufacture some components of our products outside the United States, including without limitation, Taiwan. Any interruption or other delay in the production or delivery of our supplies could reduce sales of our products and increase our costs and any negative impact of such matters on our third-party suppliers and manufacturers may also have an adverse impact on our results of operations or financial condition.

Gvoke and some of our product candidates are drug-device combination products that are regulated under the drug regulations of the Federal Food, Drug, and Cosmetic Act (the "FDCA") based on their primary mode of action as a drug. Third-party manufacturers may not be able to comply with the current Good Manufacturing Practice ("CGMP") regulatory requirements applicable to drug-device combination products, including applicable provisions of the FDA's drug CGMP regulations, device CGMP requirements embodied in the Quality System Regulations ("QSRs") or similar regulatory requirements outside the United States. Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including clinical holds, fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of our products and product candidates, re-labeling or re-packaging of our products, operating restrictions and criminal prosecutions, any of which could significantly affect the supply of our products and product candidates. The facilities used by our contract manufacturers to manufacture our products and product candidates must be approved by the FDA pursuant to inspections conducted by the FDA. The FDA and other foreign regulatory authorities require manufacturers to register manufacturing facilities. We do not control the manufacturing process of, and are completely dependent on, our contract manufacturing partners for compliance with CGMPs and QSRs. Contract manufacturers may face manufacturing or quality control problems causing drug substance or device component production and shipment delays or a situation where the contractor may not be able to maintain compliance with the applicable CGMP or QSR requirements. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications, CGMP and/or QSRs and the strict regulatory requirements of the FDA or others, they will not be able to secure and/or maintain regulatory approval for their manufacturing facilities. In addition, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or such foreign regulatory authorities do not approve these facilities for the manufacture of our products or product candidates or if they withdraw any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to market our products or develop, obtain regulatory approval for or market our product candidates, if approved.

There are a limited number of third-party suppliers that are compliant with CGMP and/or QSRs, as required by the FDA, the EU, and other regulatory authorities, and that also have the necessary expertise and capacity to manufacture our materials and products. As a result, it may be difficult for us to locate third-party suppliers for our anticipated future needs, and our anticipated growth could strain the ability of our current third-party suppliers to deliver products, raw materials and components to us. If we are unable to arrange for third-party suppliers for our materials and products, or to do so on commercially reasonable terms, we may not be able to complete development of or market our products.

The introduction of new CGMP or QSR regulations or product specific requirements by a regulatory body may require that we source alternative materials, modify existing manufacturing processes or implement design changes to our products that are subject to prior approval by the FDA or other regulatory authorities. We may also be required to reassess a third-party supplier's compliance with all applicable new regulations and guidelines, which could further impede our ability to manufacture and supply products in a timely manner. As a result, we could incur increased production costs, experience supply interruptions, suffer damage to our reputation and experience an adverse effect on our business and financial results.

In addition, our reliance on third-party suppliers involves a number of additional risks, including, among other things:

- our suppliers may fail to comply with regulatory requirements or make errors in manufacturing raw materials, components or products that could negatively affect the efficacy or safety of our products or cause delays in shipments of our products;
- we may be subject to price fluctuations due to terms within long-term supply arrangements with suppliers or lack of long-term supply arrangements for key materials and products;
- our suppliers may lose access to critical services or sustain damage to a facility, including losses due to natural disasters, geo-political events, or epidemics that may result in a sustained interruption in the manufacture and supply of our products;
- fluctuations in demand for our products or a supplier's demand from other customers may affect their ability or willingness to deliver materials or products in a timely manner or may lead to long-term capacity constraints at the supplier;
- we may not be able to find new or alternative sources or reconfigure our products and manufacturing processes in a timely manner if necessary raw materials or components become unavailable;
- our suppliers may encounter financial or other hardships unrelated to our demand for materials, products and services, which could inhibit their ability to fulfill our orders and meet our requirements; and
- the possibility of breach or termination of a manufacturing agreement or purchase order by the third party.

In addition, we could be forced to secure new materials or develop alternative third-party suppliers, which can be difficult given our product complexity, long development lead-times and global regulatory review processes.

If any CMOs with whom we contract fails to perform its obligations, we may be forced to manufacture the materials ourselves, for which we may not have the capabilities or resources, or enter into an agreement with a different CMO, which we may not be able to do on reasonable terms, if at all. In either scenario, our clinical trials or commercial distribution could be delayed significantly as we establish alternative supply sources. In some cases, the technical skills required to manufacture our products or product candidates may be unique or proprietary to the original CMO and we may have difficulty, or there may be contractual restrictions prohibiting us from, transferring such skills to a back-up or alternate supplier, or we may be unable to transfer such skills at all. In addition, if we are required to change CMOs for any reason, we will be required to verify that the new CMO maintains facilities and procedures that comply with quality standards and with all applicable regulations. We will also need to verify, such as through a manufacturing comparability study, that any new manufacturing process will produce our product according to the specifications previously submitted to or approved by the FDA or another regulatory authority. The delays associated with the verification of a new CMO could negatively affect our ability to develop product candidates or commercialize our products in a timely manner or within budget. Furthermore, a CMO may possess technology related to the manufacture of our product candidate that such CMO owns independently. This would increase our reliance on such CMO or require us to obtain a license from such CMO in order to have another CMO manufacture our products or product candidates. In addition, in the case of the CMOs that supply our products or product candidates, changes in manufacturers often involve changes in manufacturing procedures and processes, which could require that we conduct bridging studies between our prior clinical supply used in our clinical trials and that of any new manufacturer. We may be unsuccessful in demonstrating the comparability of clinical supplies which could require the conduct of additional clinical trials. Additionally, under the CARES Act, we must have in place a risk management plan that identifies and evaluates the risks to the supply of approved drugs for certain serious diseases or conditions for each establishment where the drug or API is manufactured. The risk management plan will be subject to FDA review during an inspection. If we experience shortages in the supply of our marketed products, our results could be materially impacted.

Reimbursement decisions by third-party payors and consolidation within the healthcare industry and among competitors more generally may have an adverse effect on pricing and market acceptance. If there is not sufficient reimbursement for our products, it is less likely that they will be widely used and pricing pressure may impact our ability to sell our products at prices necessary to support our current business strategies.

Our future revenues and profitability will be adversely affected if U.S. and foreign governmental, private third-party insurers and payors and other third-party payors, including Medicare and Medicaid, do not agree to defray or reimburse the cost of our products on behalf of patients. If these entities fail to provide coverage and reimbursement with respect to our products or provide an insufficient level of coverage and reimbursement, our products may be too costly for some patients to afford and physicians may not prescribe them. In addition, limitations on the amount of reimbursement for our products may also reduce our profitability. In the United States and some foreign jurisdictions, there have been, and we expect there will continue to be, actions and proposals to control and reduce healthcare costs. There have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval for our product candidates, restrict or regulate post-approval activities and affect our ability to profitably sell any of our products or product candidates for which we obtain marketing approval. As the healthcare industry consolidates, competition to provide products and services to industry participants has become more intense and may intensify as the potential purchasers of our products or third-party payors use their purchasing power to exert competitive pricing pressure. We expect that market demand, government regulation, third-party coverage and reimbursement policies and societal pressures will continue to change the healthcare industry worldwide, resulting in further business consolidations and alliances among our potential purchasers. If competitive forces drive down the prices we are able to charge for our products, our profit margins will shrink, which will adversely affect our ability to invest in and grow our business. See the sections entitled, "*Business — Coverage and Reimbursement"* and *"Business — Healthcare Reform*".

Government and other third-party payors are also challenging the prices charged for healthcare products and increasingly limiting, and attempting to limit, both coverage and level of reimbursement for prescription drugs.

There is also significant uncertainty related to the insurance coverage and reimbursement of newly approved products, and coverage may be more limited than the purposes for which the medicine is approved by the FDA or comparable foreign regulatory authorities. In the United States, the principal decisions about reimbursement for new medicines are typically made by the Centers for Medicare & Medicaid Services, or CMS, an agency within the U.S. Department of Health and Human Services. CMS decides whether and to what extent a new medicine will be covered and reimbursed under Medicare, and private payors tend to follow CMS to a substantial degree. Factors payors consider in determining reimbursement are based on whether the product is (i) a covered benefit under its health plan; (ii) safe, effective and medically necessary; (iii) appropriate for the specific patient; (iv) cost-effective; and (v) neither experimental nor investigational.

New requirements by third-party payors include: (i) net prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs or private payors and by any future relaxation of laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States; (ii) third-party payors are increasingly requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. We cannot be sure that reimbursement will be available for any product candidate that we commercialize and, if reimbursement is available, the level of reimbursement; and (iii) many pharmaceutical manufacturers must calculate and report certain price metrics to the government, such as average manufacturer price, or AMP, and Best Price. Penalties may apply when such metrics are not submitted accurately and timely. Further, these prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs.

In addition, in some foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country. For example, the European Union provides options for its Member States to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. To obtain reimbursement or pricing approval, some of these countries may require the completion of clinical trials that compare the cost effectiveness of a particular product candidate to currently available therapies. A Member State may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. There can be no assurance that any country that has price controls or reimbursement limitations for pharmaceutical products will allow favorable reimbursement and pricing arrangements for any of our product candidates. Historically, products launched in the European Union do not follow price structures of the U.S. and generally prices tend to be significantly lower.

The United States and several other jurisdictions are considering, or have already enacted, a number of legislative and regulatory proposals to change the healthcare system in ways that could negatively affect our ability to sell our products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access to healthcare. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. We expect to experience pricing pressures in connection with the sale of our products that we develop due to the trend toward managed healthcare, the increasing influence of health maintenance organizations and additional legislative proposals.

At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing.

Adoption of general controls and measures, coupled with the tightening of restrictive policies in jurisdictions with existing controls and measures, could limit payments for pharmaceutical drugs. While we cannot predict what impact on federal reimbursement policies this legislation will have in general or on our business specifically, the ACA may result in downward pressure on pharmaceutical reimbursement, which could negatively affect market acceptance of our products and our product candidates.

Some patients may require health insurance coverage to afford our products or product candidates, and if we are unable to obtain adequate coverage and reimbursement by third-party payors, our ability to successfully commercialize our products or product candidates may be adversely impacted. Any limitation on the use of our products or any decrease in the price of our products will have a material adverse effect on our ability to achieve profitability.

The success of Gvoke, Keveyis, Recorlev and our other product candidates will be dependent on its proper use by patients, healthcare practitioners and caregivers.

While we have designed our products to be operable by patients, caregivers and healthcare practitioners, we cannot control the successful use of the product by patients, caregivers and healthcare practitioners. Even though our products were used correctly by individuals in our human factors studies, there is no guarantee that these results will be replicated by users in the future. If we are not successful in promoting the proper use of our products by patients, healthcare practitioners and caregivers, we may not be able to achieve market acceptance or effectively commercialize our products. In addition, even in the event of proper use of our products, individual devices may fail. Increasing the scale of production inherently creates increased risk of manufacturing errors, and we may not be able to adequately inspect every device that is produced, and it is possible that individual devices may fail to perform as designed. Manufacturing errors could negatively impact market acceptance of any of our products, result in negative press coverage, or increase the risk that we may be sued.

Risks Related to our Dependence on Third Parties

We depend on third parties to conduct the clinical trials for our product candidates, and any failure of those parties to fulfill their obligations could harm our development and commercialization plans.

We depend on independent clinical investigators, CROs, academic institutions and other third-party service providers to conduct clinical trials with and for our product candidates. Although we rely heavily on these parties for successful execution of our clinical trials, we are ultimately responsible for the results of their activities and many aspects of their activities are beyond our control. For example, we are responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial, but the independent clinical investigators may prioritize other projects over ours or may fail to timely communicate issues regarding our products to us. Third parties may not complete activities on schedule or may not conduct our clinical trials in accordance with regulatory requirements or our stated protocols. Further, conducting clinical trials in foreign countries, as we have done and may do for certain of our product candidates, presents additional risks that may delay completion of our clinical trials. These risks include the failure of enrolled patients in foreign countries to adhere to clinical protocol as a result of differences in healthcare services or cultural customs, managing additional administrative burdens associated with foreign regulatory schemes, as well as political and economic risks relevant to such foreign countries. The delay or early termination of any of our clinical trial arrangements, the failure of third parties to comply with the regulations and requirements governing clinical trials, or our reliance on results of trials that we have not directly conducted or monitored could hinder or delay the development, approval and commercialization of our product candidates and would adversely affect our business, results of operations and financial condition.

We maintain compliance programs related to our clinical trials through our clinical operations and development personnel. Our clinical trial vendors are required to monitor and report to us issues with the conduct of our clinical trials, and we monitor our clinical trial vendors through our clinical, regulatory and quality assurance staff and other service providers. However, we cannot assure you that our clinical trial vendors or personnel will timely and fully discover and report any fraud or abuse or other issues that may occur in connection with our clinical trials to us. Such fraud or abuse or other issues, if they occur and are not successfully remediated, could have a material adverse effect on our research, development, and commercialization activities and results.

Risks Related to the Product Development and Regulatory Approval of Our Product Candidates

Risks Related to Regulatory Approval

We cannot be certain that our product candidates will receive marketing approval. Without marketing approval, we will not be able to commercialize our product candidates.

We have devoted significant financial resources and business efforts to the development of our product candidates. We cannot be certain that any of our product candidates will receive marketing approval.

The development of a product candidate and issues relating to its approval and marketing are subject to extensive regulation by the FDA in the United States and by comparable regulatory authorities in other countries. We are not permitted to market our product candidates in the United States until we receive approval of a New Drug Application ("NDA") or Biologics License Application ("BLA") from the FDA. The time required to obtain approval by the FDA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, approval policies, regulations, or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions.

NDAs and BLAs must include extensive preclinical and clinical data and supporting information to establish the product candidate's safety and effectiveness for each desired indication. NDAs and BLAs must also include significant information regarding the chemistry, manufacturing and controls for the product. Obtaining approval of an NDA or BLA is a lengthy, expensive and uncertain process, and we may not be successful in obtaining approval. Any delay or setback in the regulatory approval or commercialization of any of our product candidates will adversely affect our business.

The FDA has substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons. For example, the FDA:

- could determine that we cannot rely on the Section 505(b)(2) regulatory pathway or other pathways we have selected, as applicable, for our product candidates;
- could determine that the information provided by us was inadequate, contained clinical deficiencies or otherwise failed to demonstrate the safety and effectiveness of our product candidates for any indication;
- may not find the data from bioequivalence studies and/or clinical trials sufficient to support the submission of an NDA or to obtain marketing approval in the United States, including any findings that the clinical and other benefits of our product candidates outweigh their safety risks;
- may disagree with our trial design or our interpretation of data from preclinical studies, bioequivalence studies and/or clinical trials, or may change the requirements for approval even after it has reviewed and commented on the design for our trials;
- may determine that we have identified the wrong listed drug or drugs or that approval of our Section 505(b)(2) application for any of our product candidates is blocked by patent or non-patent exclusivity of the listed drug or drugs or of other previously approved drugs with the same conditions of approval as any of our product candidates (as applicable);
- may identify deficiencies in the manufacturing processes or facilities of third-party manufacturers with which we enter into agreements for the manufacturing of our product candidates;
- may audit some or all of our clinical research and human factors study sites to determine the integrity of our data and may reject any or all of such data;
- may approve our product candidates for fewer or more limited indications than we request, or may grant approval contingent on the performance of costly post-approval clinical trials;
- may change its approval policies or adopt new regulations; or
- may not approve the labeling claims that we believe are necessary or desirable for the successful commercialization of our product candidates.

Even if a product is approved, the FDA may limit the indications for which the product may be marketed, require extensive warnings on the product labeling or require expensive and time-consuming clinical trials and/or reporting as conditions of approval. Regulators of other countries and jurisdictions have their own procedures for approval of product candidates with which we must comply prior to marketing in those countries or jurisdictions.

Obtaining regulatory approval for marketing of a product candidate in one country does not ensure that we will be able to obtain regulatory approval in any other country. In addition, delays in approvals or rejections of marketing applications in the United States or other countries may be based upon many factors, including regulatory requests for additional analyses, reports, data, preclinical studies and clinical trials, regulatory questions regarding different interpretations of data and results, changes in regulatory policy during the period of product development and the emergence of new information regarding our product candidates or other products. Also, regulatory approval for any of our product candidates may be withdrawn.

Clinical failure may occur at any stage of clinical development, and the results of our clinical trials may not support our proposed indications for our product candidates. If our clinical trials fail to demonstrate efficacy and safety to the satisfaction of the FDA or other regulatory authorities, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development of such product candidate.

We cannot be certain that existing clinical trial results will be sufficient to support regulatory approval of our product candidates. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and we cannot be sure that the results of later clinical trials will replicate the results of prior clinical trials and preclinical testing. Moreover, success in clinical trials in a particular indication does not ensure that a product candidate will be successful in other indications. A number of companies in the pharmaceutical industry have suffered significant setbacks in clinical trials, even after promising results in earlier preclinical studies or clinical trials or successful later-stage trials in other related indications. These setbacks have been caused by, among other things, preclinical findings made while clinical trials were underway and safety or efficacy observations made in clinical trials, including previously unreported adverse events. The results of preclinical and early clinical trials of our product candidates may not be predictive of the results of later-stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical and initial clinical trials. A failure of a clinical trial to meet its predetermined endpoints would likely cause us to abandon a product candidate and may delay development of any of our product candidates. Any delay in, or termination of, our clinical trials will delay the submission of the applicable NDA or BLA to the FDA, the Marketing Authorization Application ("MAA") to the European Medicines Agency ("EMA") or other similar applications with other relevant foreign regulatory authorities and, ultimately, our ability to commercialize our product candidates and generate revenue.

We intend to utilize the 505(b)(2) pathway for the regulatory approval of certain of our product candidates. If the FDA does not conclude that such product candidates meet the requirements of Section 505(b)(2), final marketing approval of our product candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.

We are pursuing a regulatory pathway pursuant to Section 505(b)(2) of the FDCA for the approval of certain of our product candidates, which allows us to rely on submissions of existing clinical data for the drug. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from preclinical studies or clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and efficacy for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant or clinical trials demonstrating safety and efficacy. The FDA could require additional information to sufficiently demonstrate safety and efficacy to support approval.

If the FDA determines that our product candidates do not meet the requirements of Section 505(b)(2), we may need to conduct additional clinical trials, provide additional data and information, and meet additional standards for regulatory approval. In March 2010, former President Obama signed into law legislation creating an abbreviated pathway for approval under the Public Health Service Act, or PHS Act, of biological products that are similar to other biological products that are approved under the PHS Act. The legislation also expanded the definition of biological product to include proteins such as insulin. The law contains transitional provisions governing protein products such as insulin, that, under certain circumstances, might permit companies to seek approval for their insulin products as biologics under the PHS Act. Specifically, on March 23, 2020, a small subset of "biological products" approved under the Federal Food, Drug, and Cosmetic Act, such as insulin, which historically were approved as drugs, transitioned to being regulated as biological products. Being regulated as biological products enables transition products to serve as the reference product for biosimilar or interchangeable products approved through the abbreviated licensure pathway. The transition is a regulatory action in which the approved drug application for a transition biological product will be "deemed" to be a biologics license application. Thus our XeriSol pramlintide-insulin co-formulation which would have previously been reviewed through a 505(b)(2) NDA is instead now required to be approved under the PHS Act. If our other product candidates do not meet the requirements of Section 505(b)(2) or are otherwise ineligible or become ineligible for approval via the Section 505(b)(2) pathway, the time and financial resources required to obtain FDA approval for these product candidates, and the complications and risks associated with these product candidates, would likely substantially increase. Moreover, an inability to pursue the Section 505(b)(2) regulatory pathway would likely result in new competitive products reaching the market more quickly than our product candidates, which would likely materially adversely impact our competitive position and prospects. Even if we are allowed to pursue the Section 505(b)(2) regulatory pathway, our product candidates may not receive the requisite approvals for commercialization.

Some pharmaceutical companies and other actors have objected to the FDA's interpretation of Section 505(b)(2) to allow reliance on the FDA's prior findings of safety and effectiveness. If the FDA changes its interpretation of Section 505(b)(2), or if the FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) application that we submit. Moreover, the FDA has adopted an interpretation of the three-year exclusivity provisions whereby a 505(b)(2) application can be blocked by exclusivity even if it does not rely on the previously approved drug that has exclusivity (or any safety or effectiveness information regarding that drug). Under the FDA's interpretation, the approval of one or more of our

product candidates may be blocked by exclusivity awarded to a previously-approved drug product that shares certain innovative features with our product candidates, even if our 505(b)(2) application does not identify the previously-approved drug product as a listed drug or rely upon any of its safety or efficacy data. Any failure to obtain regulatory approval of our product candidates would significantly limit our ability to generate revenues, and any failure to obtain such approval for all of the indications and labeling claims we deem desirable could reduce our potential revenues.

Additional time may be required to obtain regulatory approval for certain of our product candidates because they are combination products.

Certain of our product candidates are drug and device combination products that require coordination within the FDA and similar foreign regulatory agencies for review of their device and drug components. Medical products containing a combination of new drugs, biological products or medical devices may be regulated as "combination products" in the United States and Europe. A combination product generally is defined as a product comprised of components from two or more regulatory categories (e.g., drug/device, device/biologic, drug/biologic). Each component of a combination product is subject to the requirements established by the FDA for that type of component, whether a new drug, biologic or device. In order to facilitate pre-market review of combination products, the FDA designates one of its centers to have primary jurisdiction for the pre-market review and regulation of the overall product based upon a determination by the FDA of the primary mode of action of the combination product. Where approval of the drug and device is sought under a single application, there could be delays in the approval process due to the increased complexity of the review process and the lack of a well-established review process and criteria. The EMA has a parallel review process in place for combination products, the potential effects of which in terms of approval and timing could independently affect our ability to market our combination products in Europe.

Gvoke, Keveyis, Recorlev and our product candidates may have undesirable side effects which may delay or prevent marketing approval, or, if approval is received, require them to include safety warnings, require them to be taken off the market or otherwise limit their sales.

Undesirable side effects that may be caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign authorities. The range and potential severity of possible side effects from systemic therapies are significant. The results of future clinical trials may show that our product candidates cause undesirable or unacceptable side effects, which could interrupt, delay or halt clinical trials, and result in delay of, or failure to obtain, marketing approval from the FDA and other regulatory authorities, or result in marketing approval from the FDA and other regulatory authorities with restrictive label warnings. Recent developments in the pharmaceutical industry have prompted heightened government focus on safety reporting during both pre- and post-approval time periods and pharmacovigilance. Global health authorities may impose regulatory requirements to monitor safety that may burden our ability to commercialize our drug products.

To date, patients treated with our ready-to-use glucagon have experienced drug-related side effects typically observed with glucagon products, including nausea, vomiting and headaches. In our clinical trials of Recorlev, the most common adverse reactions (incidence > 20%) were nausea/vomiting, hypokalemia, hemorrhage/contusion, systemic hypertension, headache, hepatic injury, abnormal uterine bleeding, erythema, fatigue, abdominal pain/dyspepsia, arthritis, upper respiratory infection, myalgia, arrhythmia, back pain, insomnia/sleep disturbances, and peripheral edema the most common adverse reactions (incidence > 20%) were nausea/vomiting, hypokalemia, hemorrhage/contusion, systemic hypertension, headache, hepatic injury, abnormal uterine bleeding, erythema, fatigue, abdominal pain/dyspepsia, arthritis, upper respiratory infection, myalgia, arrhythmia, back pain, insomnia/sleep disturbances, and peripheral edema. These adverse events can be dose-dependent and may increase in frequency and severity if we increase the dose to increase efficacy. It is possible that there may be side effects associated with our product candidates' use. In such an event, our trials could be suspended or terminated and the FDA or comparable foreign regulatory authorities could order us to cease further development of or deny approval of our product candidates for any or all targeted indications. The drug-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial or result in potential products liability claims. They could also adversely affect physician or patient acceptance of our product candidates. Any of these occurrences may harm our business, financial condition and prospects.

Even if our product candidates receive marketing approval, if we or others later identify undesirable or unacceptable side effects caused by such products:

- regulatory authorities may require the addition of labeling statements, including “black box” warnings, contraindications or dissemination of field alerts to physicians and pharmacies;
- we may be required to change instructions regarding the way the product is administered, conduct additional clinical trials or change the labeling of the product;
- we may be subject to limitations on how we may promote the product;
- sales of the product may decrease significantly;
- regulatory authorities may require us to take our approved product off the market;
- we may be subject to litigation or products liability claims; and
- our reputation may suffer.

Any of these events could also prevent us from achieving or maintaining market acceptance of the affected product or could substantially increase commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from the sale of our products.

We have received orphan drug designation for Keveyis, Recorlev and certain of our product candidates with respect to certain indications and may pursue such designation for others, but we may be unable to obtain such designation or to maintain the benefits associated with orphan drug status, including market exclusivity, even if that designation is granted.

We have received orphan drug designation from the FDA for four indications for our product candidates, which are our ready-to-use glucagon for PBH and Congenital Hyperinsulinism ("CHI") and our ready-to-use diazepam for acute repetitive seizures and Dravet syndrome. We have also received orphan drug designation from the EMA for our ready-to-use glucagon for CHI and Noninsulinoma Pancreatogenous Hypoglycaemia Syndrome ("NIPHS") which includes patients with PBH. We may pursue such designation for others in specific orphan indications in which there is an unmet medical need. We will continue to rely on orphan drug exclusivity in the marketing and sales of Keveyis until it expires on August 7, 2022 and intend to rely on orphan drug exclusivity and, if granted, new chemical entity (“NCE”) exclusivity in the marketing and sale of Recorlev. Under the Orphan Drug Act of 1983, the FDA may designate a product candidate as an orphan drug if it is intended to treat a rare disease or condition, which is generally defined as having a patient population of fewer than 200,000 individuals in the United States, or a patient population greater than 200,000 in the United States where there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the United States. Orphan drug designation entitles a party to financial incentives such as opportunities for grant funding towards clinical trial costs, tax advantages, and user-fee waivers. After the FDA grants orphan drug designation, the generic identity of the drug and its potential orphan use are disclosed publicly by the FDA. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process. Although we may seek orphan drug designation for certain additional indications, we may never receive such designation. Moreover, obtaining orphan drug designation for one indication does not mean we will be able to obtain such designation for another indication.

If a product that has orphan drug designation subsequently receives the first FDA approval for a particular active ingredient for the disease for which it has such designation, the product is entitled to orphan drug exclusivity. Orphan drug exclusivity means that the FDA may not approve any other applications, including an NDA, to market the same drug for the same indication for seven years, except in limited circumstances such as if the FDA finds that the holder of the orphan drug exclusivity has not shown that it can assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated. Similarly, the FDA can subsequently approve a drug with the same active moiety for the same condition during the exclusivity period if the FDA concludes that the later drug is clinically superior, meaning the later drug is safer, more effective or makes a major contribution to patient care. In assessing whether we can demonstrate that our drug provides a “major contribution to patient care” over and above the currently approved drugs, which is evaluated by the FDA on a case-by-case basis, there is no one objective standard and the FDA may, in appropriate circumstances, consider such factors as convenience of treatment location, duration of treatment, patient comfort, reduced treatment burden, advances in ease and comfort of drug administration, longer periods between doses, and potential for self-administration. However, such a demonstration to overcome the seven-year market exclusivity may be difficult to establish with limited precedents and there can be no assurance that we will be successful in these efforts. Even with respect to the indications for which we have received orphan designation, we may not be the first to obtain marketing approval for any particular orphan indication due to the uncertainties associated with developing pharmaceutical products, and thus approval of our product candidates could be blocked for seven years if another company previously obtained approval and orphan drug exclusivity for the same drug and same condition. If we do obtain exclusive marketing rights in the United States, they may be limited if we seek approval for an indication broader than the orphan designated indication and may be lost if the FDA later determines that the request for designation was materially defective or if we are unable to assure sufficient quantities of the product to meet the needs of the relevant patients. Further, exclusivity may not effectively protect the product from competition because different drugs with different active moieties can be approved for the same condition, the same drugs can be approved for different indications and might then be used off-label in our approved indication, and different drugs for the same condition may already be approved and commercially available.

In Europe, the period of orphan drug exclusivity is ten years, although it may be reduced to six years if, at the end of the fifth year, it is established that the criteria for orphan drug designation are no longer met, in other words, when it is shown on the basis of available evidence that the product is sufficiently profitable not to justify maintenance of market exclusivity. We have received orphan drug designation from the EMA for our ready-to-use glucagon for the treatment of CHI and NIPHS, which includes patients with PBH.

Even with the FDA approval of Gvoke, Keveyis and Recorlev in the United States and the EMA and MHRA approval of Ogluo in the European Union and the United Kingdom, we may not be able to obtain or maintain foreign regulatory approvals to market our products in other countries.

We do not have any products other than Gvoke, Keveyis and Recorlev approved for sale in the United States, nor any products or product candidates other than Ogluo approved for sale in any international markets, and we do not have experience in obtaining regulatory approval in international markets outside of the European Union and the United Kingdom. In order to market products in any particular jurisdiction, we must establish and comply with numerous and varying regulatory requirements on a country-by-country basis regarding safety and efficacy. Approval by the FDA in the United States does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval or certification by one foreign regulatory authority does not ensure approval or certification by regulatory authorities in other foreign countries or by the FDA. International jurisdictions require separate regulatory approvals and compliance with numerous and varying regulatory requirements. The approval procedures vary among countries and may involve requirements for additional testing, and the time required to obtain approval may differ from country to country and from that required to obtain clearance or approval in the United States.

In addition, some countries only approve or certify a product for a certain period of time, and we are required to re-approve or re-certify our products in a timely manner prior to the expiration of our prior approval or certification. We may not obtain foreign regulatory approvals on a timely basis, if at all. We may not be able to file for regulatory approvals or certifications and may not receive necessary approvals to commercialize our products in any market. If we fail to receive necessary approvals or certifications to commercialize our products in foreign jurisdictions on a timely basis, or at all, or if we fail to have our products re-approved or re-certified, our business, results of operations and financial condition could be adversely affected. The foreign regulatory approval or certification process may include all of the risks associated with obtaining FDA clearance or approval. In addition, the clinical standards of care may differ significantly such that clinical trials conducted in one country may not be accepted by healthcare providers, third-party payors or regulatory authorities in other countries, and regulatory approval in one country does not guarantee regulatory approval in any other country. If we fail to comply with regulatory requirements in international markets or to obtain and maintain required approvals, or if regulatory approvals in international markets are delayed, our target market will be reduced and our ability to realize the full market potential of any drug we develop will be unrealized.

Recently enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize our products and product candidates and affect the prices we may obtain.

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay regulatory approval of our product candidates, restrict or regulate post-approval activities and affect our ability to profitably sell any products or product candidates for which we obtain marketing approval. See the section entitled, "*Business — Healthcare Reform*".

Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives.

The cost of prescription pharmaceuticals in the United States has also been the subject of considerable debate, and members of Congress have indicated that they will address such costs through new legislative measures. To date, there have been several recent U.S. congressional inquiries and proposed state and federal legislation designed to, among other things, improve transparency in drug pricing, review the relationship between pricing and manufacturer patient programs, reduce the costs of drugs under Medicare, and reform government program reimbursement methodologies for drug products. There has recently been intense publicity regarding the pricing of pharmaceutical products generally, including publicity and pressure resulting from the prices charged for new products as well as price increases for older products that the government and public deem excessive. We may experience downward pricing pressure on the price of our products due to social or political pressure to lower the cost of drugs, which could reduce our revenue and future profitability. Many companies in our industry have received governmental requests for documents and information relating to drug pricing and patient support programs, including Strongbridge, which is cooperating with these voluntary requests for information. We could incur significant expense and experience reputational harm as a result of these or other similar future inquiries, as well as reduced market acceptance and demand for our products, which could harm our ability to market our products in the future. These factors could also result in changes in our product pricing and distribution strategies, reduced demand for our products and/or reduced reimbursement of products, including by federal health care programs such as Medicare and Medicaid and state health care programs.

The pricing of prescription pharmaceuticals is also subject to governmental control outside the United States. In these other countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost

effectiveness of our product candidates to other available therapies. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our ability to generate revenues and become profitable could be impaired.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for approved products. In addition, there have been several recent Congressional inquiries and proposed bills designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, reduce the cost of drugs under Medicare and reform government program reimbursement methodologies for drugs. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of our products and product candidates, if any, may be. In addition, increased scrutiny by the U.S. Congress of the FDA's approval process may significantly delay or prevent marketing approval of those product candidates for which we seek marketing approval, as well as subject us to more stringent labeling and post-marketing testing and other requirements.

Risks Related to Product Development

Our failure to successfully identify, develop and market additional product candidates, or acquire additional product candidates or enter into collaborations or other commercial agreements could impair our ability to grow.

As part of our growth strategy, we intend to identify, develop and market additional product candidates leveraging our formulation technology platforms, and evaluate other commercial relationships through collaborations or other strategic agreements. We are exploring various therapeutic opportunities for our pipeline programs. We may spend several years completing our development of any particular current or future internal product candidates, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. Gvoke, which delivers ready-to-use glucagon via a pre-filled syringe or auto-injector, was approved by the FDA on September 10, 2019 for the treatment of severe hypoglycemia in pediatric (aged two years and above) and adult patients with diabetes. While we have identified several additional potential applications of our ready-to-use glucagon, there is no guarantee that we will be able to utilize our formulation technology platforms to obtain approval of additional product candidates.

In the future, we may be dependent upon pharmaceutical companies, academic scientists and other researchers to sell or license product candidates, approved products or the underlying technology to us. The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. In addition, we expect to seek one or more collaborators for the development and commercialization of one or more of our products or product candidates, particularly with respect to our pipeline product candidates or foreign geographies. We face significant competition in seeking appropriate collaborators. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies or enter into collaborations or other strategic arrangements and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate or retain key employees of any acquired businesses.

Further, any product candidate that we identify internally or acquire would require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and other regulatory authorities.

Risks Related to our Industry and Ongoing Legal and Regulatory Requirements

Risks Related to Ongoing Regulatory Obligations

Even after approval of our products and product candidates, we may still face future development and regulatory difficulties. If we fail to comply with continuing U.S. and non-U.S. regulations or new adverse safety data arise, we could lose our marketing approvals and our business would be seriously harmed.

Our approved products and product candidates, if approved, will also be subject to ongoing regulatory requirements for manufacturing, distribution, sale, labeling, packaging, storage, advertising, promotion, record-keeping and submission of safety and other post-market information. Approved products, third-party suppliers and their facilities are required to comply with extensive FDA requirements and requirements of other similar agencies even after approval, including ensuring that quality control and manufacturing procedures conform to CGMPs and applicable QSRs and applicable product tracking and tracing requirements. As such, we and our third-party suppliers are subject to continual review and periodic inspections, both announced and unannounced, to assess compliance with CGMPs and QSRs. Accordingly, we and our third-party suppliers must continue to expend time, money and effort in all areas of regulatory compliance, including manufacturing, production and quality control. We will also be required to report certain adverse reactions and production problems, if any, to the FDA and other similar agencies and to comply with certain requirements concerning advertising and promotion for our products. Promotional communications with respect to prescription drugs are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the product's approved label. Accordingly, we may not promote our approved products for indications or uses for which they are not approved.

If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, or disagrees with the promotion, marketing or labeling of a product, it may impose restrictions on that product or us, including requiring withdrawal of the product from the market. These unknown problems could be discovered as a result of any post-marketing follow-up studies, routine safety surveillance or other reporting required as a condition to approval.

Regulatory agencies may also impose requirements for costly post-marketing studies or clinical trials and surveillance to monitor the safety or efficacy of a product. The FDA and other agencies, including the Department of Justice ("DOJ"), closely regulate and monitor the post-approval marketing and promotion of products to ensure that they are manufactured, marketed and distributed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA imposes stringent restrictions on manufacturers' communications regarding off-label use, and if we, or any future collaborators, do not market any of our products for which we, or they, receive marketing approval for only their approved indications, we, or they, may be subject to warnings or enforcement action for off-label marketing, government investigations, or litigation. Violation of the FDCA and other statutes, including the False Claims Act, relating to the promotion and advertising of prescription drugs may lead to investigations or allegations of violations of federal and state healthcare fraud and abuse laws and state consumer protection laws. On August 14, 2020, we received an untitled letter from FDA's Office of Prescription Drug Promotion regarding a promotional television advertisement for Gvoke PFS. The letter raised concerns that the advertisement did not include sufficient risk information, made misleading claims as to the product's ease of use, and omitted information about the seriousness of the condition for which Gvoke PFS is indicated and the circumstances when it is appropriate to administer Gvoke PFS. The television advertisement cited in the untitled letter was discontinued in March of 2020. We submitted a response to the FDA regarding our plan to revise the advertisement at issue. The FDA completed evaluation of our response and confirmed that we have addressed all the violations contained in the untitled letter.

If our products or product candidates fail to comply with applicable regulatory requirements, or if a problem with one of our products or third-party suppliers is discovered, a regulatory agency may:

- restrict the marketing or manufacturing of such products;
- restrict or require modification of or revision to the labeling of a product;
- issue warning letters or untitled letters which may require corrective action;
- mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- require us to enter into a consent decree or permanent injunction, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- impose other administrative or judicial civil or criminal penalties including fines, imprisonment and disgorgement of profits;
- suspend or withdraw regulatory approval;
- refuse to approve pending applications or supplements to approved applications filed by us;
- close the facilities of our third-party suppliers;
- suspend ongoing clinical trials;
- impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or recommend or require a product recall.

The FDA's and foreign regulatory agencies' policies are subject to change, and additional federal, state, local or non-U.S. governmental regulations may be enacted that could affect our ability to maintain compliance. We cannot predict the likelihood, nature or extent of adverse governmental regulation that may arise from future legislation or administrative action, either in the United States or abroad.

Our relationships with customers and payors will be subject to applicable anti-kickback, fraud and abuse, transparency, and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors will play a primary role in the recommendation and prescription of any products for which we obtain marketing approval. Our future arrangements with investigators, healthcare practitioners, consultants, third-party payors and customers, if any, will subject us to broadly applicable fraud and abuse and other healthcare laws and regulations. These laws and regulations may constrain the business or financial arrangements and relationships through which we conduct our operations, including how we research, market, sell and distribute any products for which we obtain marketing approval. See the section entitled, "*Business — Other Healthcare Laws and Compliance Requirements*".

Efforts to ensure that our business arrangements with third parties, and our business generally, will comply with applicable healthcare laws and regulations involve substantial costs. It is possible that governmental authorities will conclude that our business practices, including our arrangements with physicians and other healthcare providers, some of whom may receive stock options as compensation for services provided, may not comply with current or future statutes, regulations, agency guidance or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, imprisonment, exclusion of products from government funded healthcare programs, such as Medicare and Medicaid, disgorgement, contractual damages, diminished profits and future earnings, reputational harm and the curtailment or restructuring of our operations, as well as additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, any of which could adversely affect our ability to operate our business and our financial results. Defending against any such actions can be costly and time consuming and may require significant financial and personnel resources. Therefore, even if we are successful in defending against any such actions that may be brought against us, our business may be impaired. Further, if any of the physicians or other healthcare providers or entities with whom we expect to do business is found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs.

Third party patient assistance programs that receive financial support from companies have become the subject of enhanced government and regulatory scrutiny. Government enforcement agencies have shown increased interest in pharmaceutical companies' product and patient assistance programs, including reimbursement support services, and a number of investigations into these programs have resulted in significant civil and criminal settlements. The U.S. government has established guidelines that suggest that it is lawful for pharmaceutical manufacturers to make donations to charitable organizations who provide co-pay assistance to Medicare patients, provided that such organizations, among other things, are bona fide charities, are entirely independent of and not controlled by the manufacturer, provide aid to applicants on a first-come basis according to consistent financial criteria and do not link aid to use of a donor's product. However, donations to patient assistance programs have received some negative publicity and have been the subject of multiple government enforcement actions, related to allegations regarding their use to promote branded pharmaceutical products over other less costly alternatives. Specifically, in recent years, there have been multiple settlements resulting out of government claims challenging the legality of their patient assistance programs under a variety of federal and state laws. It is possible that we may make grants to independent charitable foundations that help financially needy patients with their premium, co-pay, and co-insurance obligations. If we choose to do so, and if we or our vendors or donation recipients are deemed to fail to comply with relevant laws, regulations or evolving government guidance in the operation of these programs, we could be subject to damages, fines, penalties, or other criminal, civil, or administrative sanctions or enforcement actions. We cannot ensure that our compliance controls, policies, and procedures will be sufficient to protect against acts of our employees, business partners, or vendors that may violate the laws or regulations of the jurisdictions in which we operate. Regardless of whether we have complied with the law, a government investigation could impact our business practices, harm our reputation, divert the attention of management, increase our expenses, and reduce the availability of foundation support for our patients who need assistance. Further, it is possible that changes in insurer policies regarding co-pay coupons and/or the introduction and enactment of new legislation or regulatory action could restrict or otherwise negatively affect these patient support programs, which could result in fewer patients using affected products, and therefore could have a material adverse effect on our sales, business, and financial condition. Although a number of these and other proposed measures may require authorization through additional legislation to become effective, and the current U.S. presidential administration may reverse or otherwise change these measures, both the current U.S. presidential administration and Congress have indicated that they will continue to seek new legislative measures to control drug costs. We cannot predict how the implementation of and any further changes to this rule will affect our business.

Laws and regulations governing any international operations we may have in the future may preclude us from developing, manufacturing and selling certain product candidates outside the United States and require us to develop and implement costly compliance programs.

We currently have operations in the United States, and we maintain relationships with CMOs in certain parts of Europe, Asia and the United States for the manufacture of our products and product candidates. The Foreign Corrupt Practices Act ("FCPA") prohibits any U.S. individual or business from paying, offering, authorizing payment or offering of anything of value, directly or indirectly, to any

foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the United States to comply with certain accounting provisions requiring the company to maintain books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, and to devise and maintain an adequate system of internal accounting controls for international operations. The anti-bribery provisions of the FCPA are enforced primarily by the DOJ. The Securities and Exchange Commission ("SEC") is involved with enforcement of the books and records provisions of the FCPA and may suspend or bar issuers from having its securities traded on U.S. exchanges for violations of the FCPA's accounting provisions.

Various laws, regulations and executive orders also restrict the use and dissemination outside the United States, or the sharing with certain non-U.S. nationals, of information classified for national security purposes, as well as certain products and technical data relating to those products. As we expand our presence outside the United States, we are required to dedicate additional resources to comply with laws and regulations in each new jurisdiction in which we are operating or plan to operate, and these laws may preclude us from developing, manufacturing, or selling certain drugs and product candidates outside the United States, which could limit our growth potential and increase our development costs.

The creation and implementation of international business practices compliance programs, particularly FCPA compliance, are costly and such programs are difficult to enforce, especially in countries in which corruption is a recognized problem and where reliance on third parties is required. In addition, the FCPA presents particular challenges in the pharmaceutical industry because, in many countries, hospitals are operated by the government, and doctors and other hospital employees are considered foreign officials. Certain payments to hospitals in connection with clinical trials and other work have been deemed to be improper payments to government officials and have led to FCPA enforcement actions. Indictment alone under the FCPA can lead to suspension of the right to do business with the U.S. government until the pending claims are resolved. Conviction of a violation of the FCPA can result in long-term disqualification as a government contractor.

Accordingly, our failure to comply with the FCPA or other export control, anti-corruption, anti-money laundering and anti-terrorism laws or regulations and other similar laws governing international business practices may result in substantial penalties, including suspension or debarment from government contracting. The termination of a government contract or relationship as a result of our failure to satisfy any of our obligations under such laws would have a negative impact on our operations and harm our reputation and ability to procure government contracts. We cannot assure you that our compliance policies and procedures are or will be sufficient or that our directors, officers, employees, representatives, consultants and agents have not engaged and will not engage in conduct for which we may be held responsible, nor can we assure you that our business partners have not engaged and will not engage in conduct that could materially affect their ability to perform their contractual obligations to us or even result in our being held liable for such conduct.

Governments outside the United States tend to impose strict price controls, which may adversely affect our revenues, if any.

In some countries, such as the countries of the EU, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. In addition, there can be considerable pressure by governments and other stakeholders on prices and reimbursement levels, including as part of cost containment measures. Political, economic and regulatory developments may further complicate pricing negotiations, and pricing negotiations may continue after coverage and reimbursement have been obtained. Reference pricing used by various countries and parallel distribution or arbitrage between low-priced and high-priced countries can further reduce prices. To obtain reimbursement or pricing approval in some countries, we, or any future collaborators, may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidates to other available therapies, which is time consuming and costly. If reimbursement of our product candidates is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed.

Risks Related to Industry Competition

We operate in a competitive business environment and, if we are unable to compete successfully against our existing or potential competitors, our sales and operating results may be negatively affected and we may not successfully commercialize our products or product candidates, even if approved.

The pharmaceutical and biotechnology industries are characterized by intense competition and significant and rapid technological change as researchers learn more about diseases and develop new technologies and treatments. Any product candidates that we successfully develop and commercialize will compete with existing drugs and new drugs that may become available in the future. While we believe that our product and product candidate platform, development expertise and scientific knowledge provide us with competitive advantages, we face potential competition from many different sources, including major pharmaceutical, specialty pharmaceutical and biotechnology companies, academic institutions, governmental agencies and public and private research institutions. Many of our current and potential competitors are major pharmaceutical companies that have substantially greater financial, technical and marketing resources than we do, and they may succeed in developing products that would render our products obsolete or noncompetitive. Our ability to compete successfully will depend on our ability to develop future products that reach the market in a timely manner, are well adopted by patients and healthcare providers and receive adequate coverage and reimbursement from third-party payors. Because of the size of the potential market, we anticipate that companies will dedicate significant resources to developing products competitive to our product candidates.

For example, Gvoke has numerous competitors in the severe hypoglycemia market, which currently include Eli Lilly's Baqsimi®, an intranasal glucagon dry powder, Eli Lilly's GEK, Novo Nordisk's GlucaGen HypoKit and Fresenius Kabi's glucagon emergency kit for low blood sugar. Amphastar's ANDA for generic Glucagon for Injection Emergency Kit was approved by the FDA on December 29, 2020 for the treatment of severe hypoglycemia. Zealand Pharma received approval by the FDA of its dasiglucagon auto-injector Zegalogue® in March 2021 and launched in June 2021. At any time, these or other industry participants may develop alternative treatments, products or procedures for the treatment of severe hypoglycemia that compete directly or indirectly with Gvoke. Competitors may also develop and patent processes or products earlier than we can or obtain regulatory clearance or approvals for competing products more rapidly than we can, which could impair our ability to develop and commercialize similar processes or products. If alternative treatments are, or are perceived to be, superior to our products, sales of our products or product candidates, if approved, could be negatively affected and our results of operations could suffer.

The widespread acceptance of currently available therapies with which our product candidates will compete may limit market acceptance of Gvoke or our product candidates even if approved and commercialized. For example, traditional glucagon kits currently available for hypoglycemia are widely accepted in the medical community and have a long history of use. These treatments compete with Gvoke and may limit the potential for Gvoke to receive widespread acceptance.

In addition, Keveyis is an oral carbonic anhydrase inhibitor, that was approved in the United States to treat hyperkalemic, hypokalemic and related variants of PPP. Acetazolamide, another oral carbonic anhydrase inhibitor, is used frequently off-label for the prophylactic and sometimes acute treatment of PPP. Potassium supplements, are indicated for use in hypokalemic periodic paralysis in the United States and are frequently used either chronically or for emergency treatment of episodes in that form of PPP. Several other types of drugs have been reported to have benefits for chronic or acute use in one or more than one PPP variant, including potassium-sparing diuretics, beta receptor agonists, mexelitine and other sodium channel blockers, and others. We are not aware of drugs currently in development for prophylactic chronic treatment of PPP.

We are currently aware of various companies that are marketing existing drugs that may compete with Recorlev such as Corcept Therapeutics and Recordati. The treatment of endogenous Cushing's syndrome patients who fail or are ineligible for surgery in the United States and Europe are: Korlym (mifepristone) marketed by Corcept Therapeutics in the United States; Signifor LAR (pasireotide) and Isturisa (osilodrostat), both marketed by Recordati in the United States and European Union; and ketoconazole, metyrapone and mitotane marketed by HRA in the European Union. Corcept is developing relacorilant, a second-generation glucocorticoid receptor modulator; currently in Phase 3. Ketoconazole is used off-label for treatment of Cushing's syndrome in the United States. Regulatory approval of ketoconazole for the treatment of endogenous Cushing's syndrome in the United States, which is not currently being sought by any sponsor to our knowledge, could significantly increase competition for Recorlev due to the similar mechanisms of action between the drug products.

If the FDA or other applicable regulatory authorities approve generic products that compete with any of our products or product candidates, the sales of our product candidates, if approved, could be adversely affected.

Once an NDA, including a Section 505(b)(2) application, is approved, the product covered becomes a "listed drug" which can be cited by potential competitors in support of approval of an abbreviated new drug application ("ANDA"). FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create modified versions of a drug to facilitate the approval of an ANDA or other application for similar substitutes. If these manufacturers demonstrate that their product has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use, or labeling, as our products or product candidates, they might only be required to conduct a relatively inexpensive study to show that their generic product is absorbed in the body at the same rate and to the same extent as, or is bioequivalent to, our products or product candidates. In some cases, even this limited bioequivalence testing can be waived by the FDA. Laws have also been enacted to facilitate the development of generic drugs and biologics based off recently approved NDAs and BLAs. The Creating and Restoring Equal Access to Equivalent Samples Act ("CREATES Act") was enacted in 2019 requiring sponsors of approved NDAs and BLAs to provide sufficient quantities of product samples on commercially reasonable, market-based terms to entities developing generic drugs and biosimilar biological products. The law establishes a private right of action allowing developers to sue application holders that refuse to sell them product samples needed to support their applications. If we are required to provide product samples or allocate additional resources to responding to such requests or any legal challenges under this law, our business could be adversely impacted. Competition from generic equivalents to our products or product candidates could substantially limit our ability to generate revenues and therefore to obtain a return on the investments we have made in our products or product candidates. For example, Amphastar's ANDA for generic Glucagon for Injection Emergency Kit was approved by the FDA on December 29, 2020 for the treatment of severe hypoglycemia. We will continue to rely on orphan drug exclusivity in the marketing and sales of Keveyis through expiration of orphan drug exclusivity in August, 2022 and intend to rely on orphan drug exclusivity and NCE, if available, exclusivity in the marketing and sale of Recorlev. While we applied for NCE exclusivity for Recorlev under section 505(u) of the FDCA, the FDA may determine that the Recorlev application does not meet the eligibility criteria under 505(u) for NCE exclusivity.

Risks Related to Our Intellectual Property

Risks Related to Protecting Our Intellectual Property

Our success depends on our ability to protect our intellectual property and proprietary technology, as well as the ability of our collaborators to protect their intellectual property and proprietary technology.

Our success depends in large part on our ability to obtain and maintain patent protection and trade secret protection in the United States and other countries with respect to the use, formulation and structure of our proprietary product candidates, the methods used to manufacture them, the related therapeutic targets and associated methods of treatment as well as on successfully defending these patents against potential third-party challenges. Our ability to protect our products and product candidates from unauthorized making, using, selling, offering to sell or importing by third parties is dependent on the extent to which we have rights under valid and enforceable patents that cover these activities. If we do not adequately protect our intellectual property rights, competitors may be able to erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability. To protect our proprietary position, we file patent applications in the United States and abroad related to our novel product candidates that are important to our business; we may in the future also license or purchase patents or applications owned by others. The patent application and approval process is expensive and time consuming. We may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Moreover, obtaining and maintaining patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

If the scope of the patent protection we or our potential licensors obtain is not sufficiently broad, we may not be able to prevent others from developing and commercializing technology and products similar or identical to ours. The degree of patent protection we require to successfully compete in the marketplace may be unavailable or severely limited in some cases and may not adequately protect our rights or permit us to gain or keep any competitive advantage. We cannot provide any assurances that any of our patents have, or that any of our pending patent applications that mature into issued patents will include, claims with a scope sufficient to protect our current and future product candidates or otherwise provide any competitive advantage. In addition, to the extent that we license intellectual property in the future, we cannot assure you that those licenses will remain in force. In addition, the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Furthermore, patents have a limited lifespan. In the United States, the natural expiration of a patent is generally twenty years after it is filed. Various extensions may be available; however, the life of a patent and the protection it affords are limited. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized.

Even if they are unchallenged, our patents and pending patent applications, if issued, may not provide us with any meaningful protection or prevent competitors from designing around our patent claims to circumvent our patents by developing similar or alternative technologies or therapeutics in a non-infringing manner. For example, a third party may develop a competitive therapy that provides benefits similar to one or more of our products or product candidates but that uses a formulation and/or a device that falls outside the scope of our patent protection. If the patent protection provided by the patents and patent applications we hold or pursue with respect to our products or product candidates is not sufficiently broad to exclude such competition, our ability to successfully commercialize our products or product candidates could be negatively affected, which would harm our business. Although we currently own all of our patents and our patent applications, similar risks would apply to any patents or patent applications that we may in-license in the future.

We, or any future partners, collaborators, or licensees, may fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. Therefore, we may miss potential opportunities to strengthen our patent position.

It is possible that defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example with respect to proper priority claims, inventorship, claim scope, or requests for patent term adjustments. If we or our partners, collaborators, licensees or licensors fail to establish, maintain or protect such patents and other intellectual property rights, such rights may be reduced or eliminated. If our partners, collaborators, licensees or licensors are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation, prosecution, or enforcement of our patents or patent applications, such patents may be invalid and/or unenforceable, and such applications may never result in valid, enforceable patents. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain. No consistent policy regarding the breadth of claims allowed in biotechnology and pharmaceutical patents has emerged to date in the United States or in many foreign jurisdictions. In addition, the determination of patent rights with respect to pharmaceutical compounds commonly involves complex legal and factual questions, which has in recent years been the subject of much litigation. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain.

Moreover, because the issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, our patents or pending patent applications may be challenged in the courts or patent offices in the United States and abroad. There is no assurance that all of the potentially relevant prior art relating to our patents and patent applications has been found. If such prior art exists, it may be used to invalidate a patent or may prevent a patent from issuing from a pending patent application. For example, such patent filings may be subject to a third-party pre-issuance submission of prior art to the USPTO and/or to other patent offices around the world.

Alternately or additionally, we may become involved in post-grant review procedures, oppositions, derivations proceedings, reexaminations, inter partes review or interference proceedings, in the United States or elsewhere, challenging patents or patent applications in which we have rights, including patents on which we rely to protect our business. An adverse determination in any such challenges may result in loss of exclusivity or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to exclude others from using or commercializing similar or identical technology and products, or may limit the duration of the patent protection of our technology and products.

Pending and future patent applications may not result in patents being issued which protect our business, in whole or in part, or which effectively prevent others from commercializing competitive products. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. In addition, the laws of foreign countries may not protect our rights to the same extent or in the same manner as the laws of the United States. For example, patent laws in various jurisdictions, including significant commercial markets such as Europe, restrict the patentability of methods of treatment of the human body more than United States law does.

The patent application process is subject to numerous risks and uncertainties, and there can be no assurance that we or any future development partners will be successful in protecting our product candidates by obtaining, maintaining and defending patents. These risks and uncertainties include the following:

- the USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case;
- patent applications may not result in any patents being issued;
- patents that may be issued may be challenged, invalidated, modified, revoked, circumvented, found to be unenforceable or otherwise may not provide any competitive advantage;
- our competitors, many of whom have substantially greater resources and many of whom have made significant investments in competing technologies, may seek or may have already obtained patents that will limit, interfere with or eliminate our ability to make, use, and sell our potential product candidates;
- there may be significant pressure on the U.S. government and international governmental bodies to limit the scope of patent protection both inside and outside the United States for disease treatments that prove successful, as a matter of public policy regarding worldwide health concerns; and
- countries other than the United States may have patent laws less favorable to patentees than those upheld by U.S. courts, allowing foreign competitors a better opportunity to create, develop and market competing product candidates in such countries.

Issued patents that we have or may in the future obtain or license may not provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our or our future licensors' patents by developing similar or alternative technologies or products in a non-infringing manner. Our competitors may also seek approval to market their own products similar to or otherwise competitive with our products. Alternatively, our competitors may seek to market generic versions of any approved products by submitting ANDAs to the FDA in which they claim that patents owned or in the future licensed by us are invalid, unenforceable or not infringed. In these circumstances, we may need to defend or assert our patents, or both, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or other agency with jurisdiction may find our patents invalid or unenforceable, or that our competitors are competing in a non-infringing manner. Thus, even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

We have entered into a license agreement with a third party (and may, in the future, enter into additional such license agreements with other third parties) pursuant to which they have the right, but not the obligation, in certain circumstances to control enforcement of our licensed patents or defense of any claims asserting the invalidity of these patents. Even if we are permitted to pursue such enforcement or defense, we will require the cooperation of those licensors and cannot guarantee that we would receive it and on what terms. We cannot be certain that those licensors will allocate sufficient resources or prioritize their or our enforcement of such patents or defense of such claims to protect our interests in the licensed patents. If we cannot obtain patent protection or enforce existing or future patents against third parties, our competitive position and our financial condition could suffer.

In addition, we rely on the protection of our trade secrets and proprietary know-how. Although we take steps to protect our trade secrets and unpatented know-how, including entering into confidentiality agreements with third parties and confidential information and inventions agreements with employees, consultants and advisors, we cannot provide any assurances that all such agreements have been duly executed, and third parties may still obtain this information or may come upon this or similar information independently. Additionally, if the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third parties for misappropriating our trade secrets. If any of these events occurs or if we otherwise lose protection for our trade secrets or proprietary know-how, our business may be harmed.

Our reliance on third parties requires us to share our trade secrets, which increases the possibility that a competitor will discover them or that our trade secrets will be misappropriated or disclosed.

Because we rely on third parties to develop and manufacture our product candidates, we must, at times, share trade secrets with them. We seek to protect our proprietary technology in part by entering into confidentiality agreements and, if applicable, material transfer agreements, collaborative research agreements, consulting agreements or other similar agreements with our collaborators, advisors, employees, and consultants prior to beginning research or disclosing proprietary information. These agreements typically limit the rights of the third parties to use or disclose our confidential information, such as trade secrets. Despite the contractual provisions employed when working with third parties, the need to share trade secrets and other confidential information increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, or are disclosed or used in violation of these agreements. Given that our proprietary position is based, in part, on our know-how and trade secrets, a competitor's discovery of our trade secrets or other unauthorized use or disclosure would impair our competitive position and may harm our business.

The patent positions of pharmaceutical, biotechnology and other life sciences companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Further, the determination that a patent application or patent claim meets all of the requirements for patentability is a subjective determination based on the application of law and jurisprudence. The ultimate determination by the USPTO or by a court or other trier of fact in the United States, or corresponding foreign national patent offices or courts, on whether a claim meets all requirements of patentability cannot be assured. We have not conducted searches for third-party publications, patents and other information that may affect the patentability of claims in our various patent applications and patents, so we cannot be certain that all relevant information has been identified. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patent applications and patents, in any future licensed patents or patent applications or in third-party patents.

We cannot provide assurances that any claim(s) in any of our patent applications will be found to be patentable, including over our own prior art patents, or that any such patent applications will issue as patents. Neither can we make assurances as to the scope of any claims that may issue from our pending and future patent applications nor to the outcome of any proceedings instituted by any potential third parties that could challenge the patentability, validity or enforceability of our patents and patent applications in the United States or foreign jurisdictions. Any such challenge, if successful, could limit patent protection for our products and product candidates and/or materially harm our business.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- we may not be able to generate sufficient data to support full patent applications that protect the entire breadth of developments in one or more of our programs;
- it is possible that one or more of our pending patent applications will not become an issued patent or, if issued, that the patent(s) will not: (a) be sufficient to protect our technology, (b) provide us with a basis for commercially viable products and/or (c) provide us with any competitive advantages;
- if our pending applications issue as patents, they may be challenged by third parties as not infringed, invalid or unenforceable under U.S. or foreign laws; or
- if issued, the patents under which we hold rights may not be valid or enforceable.

In addition, to the extent that we are unable to obtain and maintain patent protection for one of our products or product candidates or in the event that such patent protection expires, it may no longer be cost-effective to extend our portfolio by pursuing additional development of a product or product candidate for follow-on indications.

We also may rely on trade secrets to protect our technologies or products, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators and other advisers may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third-party entity illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

Patent terms may be inadequate to protect our competitive position on our products for an adequate amount of time.

Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. Where available, we will seek extensions of patent terms in the United States and, if available, in other countries where we are prosecuting patents. In the United States, the Drug Price Competition and Patent Term Restoration Act of 1984 permits a patent term extension of up to five years beyond the normal expiration of the patent, which is limited to the approved indication (or any additional indications approved during the period of extension). However, the applicable authorities, including the FDA and the USPTO in the United States and any equivalent regulatory authority in other countries, may not agree with our assessment of whether such extensions are available and may refuse to grant

extensions to our patents or may grant more limited extensions than we request. If this occurs, our competitors may be able to take advantage of our investment in development and clinical trials by referencing our clinical and preclinical data and launch their product earlier than might otherwise be the case.

Our unpatented trade secrets, know-how, confidential and proprietary information, and technology may be inadequately protected.

We rely in part on unpatented trade secrets, know-how and technology. This intellectual property is difficult to protect, especially in the pharmaceutical industry, where much of the information about a product must be submitted to regulatory authorities during the regulatory approval process. We seek to protect trade secrets, confidential information and proprietary information, in part, by entering into confidentiality and invention assignment agreements with employees, consultants, and others. These parties may breach or terminate these agreements, and we may not have adequate remedies for such breaches. Furthermore, these agreements may not provide meaningful protection for our trade secrets or other confidential or proprietary information or result in the effective assignment to us of intellectual property and may not provide an adequate remedy in the event of unauthorized use or disclosure of confidential information or other breaches of the agreements. Despite our efforts to protect our trade secrets and our other confidential and proprietary information, we or our collaboration partners, board members, employees, consultants, contractors, or scientific and other advisors may unintentionally or willfully disclose our proprietary information to competitors.

Thus, there is a risk that our trade secrets and other confidential and proprietary information could have been, or could, in the future, be shared by any of our former employees with, and be used to the benefit of, any company that competes with us.

If we fail to maintain trade secret protection or fail to protect the confidentiality of our other confidential and proprietary information, our competitive position may be adversely affected. Competitors may also independently discover our trade secrets. Enforcement of claims that a third party has illegally obtained and is using trade secrets is expensive, time consuming and uncertain. If our competitors independently develop equivalent knowledge, methods and know-how, we would not be able to assert our trade secret protections against them, which could have a material adverse effect on our business.

If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.

Our trademarks or trade names may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. We rely on both registration and common law protection for our trademarks. We may not be able to protect our rights to these trademarks and trade names or may be forced to stop using these names, which we need for name recognition by potential partners or customers in our markets of interest. During the trademark registration process, we may receive Office Actions from the USPTO objecting to the registration of our trademark. Although we would be given an opportunity to respond to those objections, we may be unable to overcome such rejections. In addition, in the USPTO and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and/or to seek the cancellation of registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively and our business may be adversely affected.

Risks Related to Intellectual Property Litigation

The pharmaceutical industry is characterized by frequent patent litigation, and we could become subject to litigation that could be costly, result in the diversion of management's time and efforts, require us to pay damages or prevent us from marketing our existing or future products.

Our commercial success depends in part on our ability to develop, manufacture, market and sell our products that have been approved for sale, and to use our proprietary technology without alleged or actual infringement, misappropriation or other violation of the patents and proprietary rights of third parties. There have been many lawsuits and other proceedings involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and reexamination proceedings before the USPTO, and corresponding foreign patent offices. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we will market products and are developing product candidates. Some claimants, who may include our competitors in both the United States and abroad, may have substantially greater resources than we do and may be able to sustain the costs of complex intellectual property litigation to a greater degree and for longer periods of time than we could. In addition, patent holding companies that focus solely on extracting royalties and settlements by enforcing patent rights may target us. As the biotechnology and pharmaceutical industries expand and more patents are issued, the risk increases that our products and product candidates may be subject to claims of infringement of the intellectual property rights of third parties.

We cannot be sure that we know of each and every patent and pending application in the United States and abroad that is relevant or necessary to the commercialization of Gvoke, Keveyis, Recorlev, or our product candidates. Generally, we do not conduct independent reviews of patents issued to third parties. The large number of patents, the rapid rate of new patent issuances, the complexities of the technology involved, and uncertainty of litigation increase the risk of business assets and management's attention being diverted to patent litigation. Because patent applications can take many years to issue, there may be currently pending patent applications that may later result in issued patents upon which our products or product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our products or product candidates, any

compositions formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product or product candidate unless we obtained a license under the applicable patents, or until such patents expire or are finally determined to be invalid or unenforceable. Similarly, if any third-party patents were held by a court of competent jurisdiction to cover aspects of our compositions, formulations, or methods of treatment, prevention or use, the holders of any such patents may be able to block our ability to develop and commercialize the applicable product or product candidate unless we obtained a license or until such patent expires or is finally determined to be invalid or unenforceable. In either case, such a license may not be available on commercially reasonable terms, or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us.

We may become involved in lawsuits to protect or enforce our patents or other intellectual property, which could be expensive, time consuming and unsuccessful. Competitors may infringe our patents, trademarks, copyrights or other intellectual property. To counter infringement or unauthorized use, we may be required to file infringement lawsuits, which can be expensive and time consuming and divert the time and attention of our management and scientific personnel. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents, in addition to counterclaims asserting that our patents are invalid or unenforceable, or both. In any patent infringement proceeding, there is a risk that a court will decide that a patent of ours is invalid or unenforceable, in whole or in part, and that we do not have the right to exclude the other party from making, using or selling the invention at issue. There is also a risk that, even if the validity of such patents is upheld, the court will construe the patent's claims narrowly or decide that we do not have the right to exclude the other party from making, using or selling the invention at issue on the grounds that our patent claims do not cover the invention or the other party's manufacture, use or sale of it. An adverse outcome in a litigation or proceeding involving one or more of our patents could limit our ability to assert those patents against those parties or other competitors and may curtail or preclude our ability to exclude third parties from making and selling similar or competitive products. Similarly, if we assert trademark infringement claims, a court may determine that the marks we have asserted are unenforceable, that the alleged infringing mark does not infringe our trademark rights, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this last instance, we could ultimately be forced to cease use of such trademarks.

Others may challenge inventorship or claim an ownership interest in our intellectual property which could expose it to litigation and have a significant adverse effect on its prospects.

A third party or former employee or collaborator may claim an ownership interest in one or more of our patents or other proprietary or intellectual property rights. A third party could bring legal actions against us and seek monetary damages and/or enjoin clinical testing, manufacturing and marketing of the affected product or products. While we are presently unaware of any claims or assertions by third parties with respect to our patents or other intellectual property, we cannot guarantee that a third party will not assert a claim or an interest in any of such patents or intellectual property. If we become involved in any litigation, it could consume a substantial portion of our resources and cause a significant diversion of effort by our technical and management personnel.

If any of these actions are successful, in addition to any potential liability for damages, we could be required to obtain a license to continue to manufacture or market the affected product, in which case we may be required to pay substantial royalties or grant cross-licenses to our patents. We cannot, however, assure you that any such license will be available on acceptable terms, if at all. Furthermore, any potential intellectual property litigation also could force us to do one or more of the following:

- stop selling products or using technology that contains the allegedly infringing intellectual property;
- lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property rights against others;
- incur significant legal expenses;
- pay substantial damages to the party whose intellectual property rights we may be found to be infringing;
- redesign those products that contain the allegedly infringing intellectual property, which could be costly, disruptive and/or infeasible; or
- attempt to obtain a license to the relevant intellectual property from third parties, which may not be available on reasonable terms or at all.

The outcome of intellectual property litigation is subject to uncertainties that cannot be adequately quantified in advance, including the demeanor and credibility of witnesses and the identity of any adverse party. This is especially true in intellectual property cases that may turn on the testimony of experts as to technical facts upon which experts may reasonably disagree. Any litigation or claim against us, even those without merit, may cause us to incur substantial costs and could place a significant strain on our financial resources, divert the attention of management from our core business, and harm our reputation.

We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors.

We may also be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors. Many of our employees were previously employed at other pharmaceutical companies, including our competitors or potential competitors, in some cases until recently. We may be subject to claims that we or our employees have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of these former employers or competitors. In addition, we have been and may in the future be

subject to claims that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. If our defense to those claims fails, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Any litigation or the threat thereof may adversely affect our ability to hire employees. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products and product candidates, which could have an adverse effect on our business, results of operations and financial condition.

An NDA submitted under Section 505(b)(2) subjects us to the risk that we may be subject to a patent infringement lawsuit that would delay or prevent the review or approval of our product candidates.

We expect to submit NDAs under Section 505(b)(2) of the FDCA for most of our product candidates. Section 505(b)(2) permits the submission of an NDA where at least some of the information required for approval comes from preclinical studies and/or clinical trials that were not conducted by, or for, the applicant and for which the applicant has not obtained a right of reference. An NDA under Section 505(b)(2) would enable us to reference published literature and/or the FDA's previous findings of safety and effectiveness for a previously approved drug. For NDAs submitted under Section 505(b)(2), the patent certification and related provisions of the Hatch-Waxman Act apply.

Accordingly, if we rely for approval on the safety or effectiveness information for a previously approved drug, referred to as a listed drug, we will be required to include patent certifications in our 505(b)(2) application regarding any patents covering the listed drug. If there are patents listed in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book, for the listed drug, and we seek to obtain approval prior to the expiration of one or more of those patents, we will be required to submit a Paragraph IV certification indicating our belief that the relevant patents are invalid or unenforceable or will not be infringed by the manufacture, use or sale of the product that is the subject of our 505(b)(2) application. Otherwise, our 505(b)(2) application cannot be approved by the FDA until the expiration of any patents listed in the Orange Book for the listed drug. While we did not submit any Paragraph IV certifications in connection with our 505(b)(2) NDA for Gvoke, and do not expect to submit any Paragraph IV certifications for our other current product candidates, there can be no assurance that we will not be required to submit a Paragraph IV certification in respect of any future product candidates for which we seek approval under Section 505(b)(2).

However, an NDA submitted under Section 505(b)(2) subjects us to the risk that we may be subject to a patent infringement lawsuit that would delay or prevent the review or approval of our product candidates.

If we submit any Paragraph IV certification that may be required, we will be required to provide notice of that certification to the NDA holder and patent owner shortly after our 505(b)(2) application is accepted for filing. Under the Hatch-Waxman Act, the patent owner may file a patent infringement lawsuit after receiving such notice. If a patent infringement lawsuit is filed within 45 days of the patent owner's or NDA holder's receipt of notice (whichever is later), a one-time, automatic stay of the FDA's ability to approve the 505(b)(2) NDA is triggered, which typically extends for 30 months unless patent litigation is resolved in favor of the Paragraph IV filer or the patent expires before that time. Accordingly, we may invest a significant amount of time and expense in the development of one or more product candidates only to be subject to significant delay and patent litigation before such product candidates may be commercialized, if at all.

In addition, a 505(b)(2) application will not be approved until any non-patent exclusivity listed in the Orange Book for the listed drug, or for any other drug with the same protected conditions of approval as our product, has expired. The FDA also may require us to perform one or more additional clinical trials or measurements to support the change from the listed drug, which could be time consuming and could substantially delay our achievement of regulatory approval. The FDA also may reject any future 505(b)(2) submissions and require us to submit traditional NDAs under Section 505(b)(1), which would require extensive data to establish safety and effectiveness of the product for the proposed use and could cause delay and additional costs. In addition, the FDA could reject any future 505(b)(2) application and require us to submit an ANDA if, before the submission of our 505(b)(2) application, the FDA approves an application for a product that is pharmaceutically equivalent to ours. These factors, among others, may limit our ability to commercialize our product candidates successfully.

We may not be able to enforce our intellectual property rights throughout the world.

We may not be able to enforce our intellectual property rights throughout the world. Filing, prosecuting, enforcing and defending patents on our products and product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. The requirements for patentability may differ in certain countries, particularly in developing countries; thus, even in countries where we do pursue patent protection, there can be no assurance that any patents will issue with claims that cover our products and product candidates.

Moreover, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in foreign intellectual property laws. Additionally, laws of some countries outside the United States and Europe do not afford intellectual property protection to the same extent as the laws of the United States and Europe. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. The legal systems of some countries, including India, China and other developing countries, do not favor the enforcement of patents and other intellectual property rights. This could make it difficult for us to stop the infringement of our patents or the misappropriation of our other intellectual property rights. For example, many foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third

parties. Consequently, we may not be able to prevent third parties from practicing our inventions in certain countries outside the United States and Europe. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop and market their own products and, further, may export otherwise infringing products to territories where we have patent protection, if our ability to enforce our patents to stop infringing activities is inadequate. These products may compete with our products, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Agreements through which we may license patent rights may not give us sufficient rights to permit us to pursue enforcement of those licensed patents or defense of any claims asserting the invalidity of these patents or the ability to control enforcement or defense of such patent rights in all relevant jurisdictions as requirements may vary.

Proceedings to enforce our patent rights in foreign jurisdictions, whether or not successful, could result in substantial costs and divert our efforts and resources from other aspects of our business. Moreover, such proceedings could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Furthermore, while we intend to protect our intellectual property rights in major markets for our products, we cannot ensure that we will be able to initiate or maintain similar efforts in all jurisdictions in which we may wish to market our products. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate.

Even if we establish infringement, the court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may or may not be an adequate remedy. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could adversely affect the price of shares of our common stock. Moreover, there can be no assurance that we will have sufficient financial or other resources to file and pursue such infringement claims, which typically last for years before they are concluded. Even if we ultimately prevail in such claims, the monetary cost of such litigation and the diversion of the attention of our management and scientific personnel could outweigh any benefit we receive as a result of the proceedings.

Risks Related to Intellectual Property Laws

Changes to the patent law in the United States and other jurisdictions could diminish the value of patents in general, thereby impairing our ability to protect our products.

As is the case with other biopharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involve both technological and legal complexity and are therefore costly, time consuming and inherently uncertain. Changes in patent statutes, regulations promulgated under them, and court holdings interpreting the statutes and regulations could make it more difficult to obtain patent protection for our inventions and increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could harm our business, results of operations and financial condition. Depending on future actions by the U.S. Congress, the U.S. courts, the USPTO and the relevant law-making bodies in other countries, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

Further, for a patent with an effective filing date of March 16, 2013 or later, a petition for post-grant review can be filed by a third party in a nine-month window from issuance of the patent. Alternatively, a petition for inter partes review can be filed after the nine-month period for filing a post-grant review petition has expired. Post-grant review proceedings can be brought on any ground of invalidity, whereas inter partes review proceedings can only raise an invalidity challenge based on published prior art and patents. In these adversarial actions, the USPTO reviews patent claims without the presumption of validity afforded to U.S. patents in lawsuits in U.S. federal courts and uses a lower burden of proof than used in litigation in U.S. federal courts. Therefore, it is generally considered easier and less costly for a competitor or third party to have a U.S. patent invalidated in a USPTO post-grant review or inter partes review proceeding than in a litigation in a U.S. federal court. If any of our patents are challenged by a third party in such a USPTO proceeding, there is no guarantee that we will be successful in defending the patent, which could result in a loss of the challenged patent right to us.

Risks Related to Employee Matters, Managing Growth and Ongoing Operations

Risks Related to Ongoing Operations

Disruptions at the FDA, the SEC and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, global health concerns, ability to hire and retain key personnel and accept the payment of user fees, and statutory, regulatory, and policy changes. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of the SEC and other government agencies on which our operations may rely, including those that fund research and development activities, is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years the U.S. government has shut down several times and certain regulatory agencies, such as the FDA and the SEC, have had to furlough critical FDA, SEC and other government employees and stop critical activities. Since March 2020 when foreign and domestic inspections of facilities were largely placed on hold due to the COVID-19 pandemic, the FDA has been working to resume routine surveillance, bioresearch monitoring and pre-approval inspections on a prioritized basis. Since April 2021, the FDA has conducted limited inspections and employed remote interactive evaluations, using risk management methods, to meet user fee commitments and goal dates. Ongoing travel restrictions and other uncertainties continue to impact oversight operations both domestic and abroad and it is unclear when standard operational levels will resume. The FDA is continuing to complete mission-critical work, prioritize other higher-tiered inspectional needs (e.g., for-cause inspections), and carry out surveillance inspections using risk-based approaches for evaluating public health. Should FDA determine that an inspection is necessary for approval and an inspection cannot be completed during the review cycle due to restrictions on travel, and the FDA does not determine a remote interactive evaluation to be appropriate, the agency has stated that it generally intends to issue, depending on the circumstances, a complete response letter or defer action on the application until an inspection can be completed. During the COVID-19 public health emergency, a number of companies announced receipt of complete response letters due to the FDA's inability to complete required inspections for their applications. During the COVID-19 public health emergency, the FDA has worked to ensure timely reviews of applications for medical products in line with its user fee performance goals and conduct mission critical domestic and foreign inspections to ensure compliance of manufacturing facilities with FDA quality standards. However, the FDA may not be able to continue its current pace and approval timelines could be extended, including where a pre-approval inspection or an inspection of clinical sites is required and due to the ongoing COVID-19 pandemic and travel restrictions FDA is unable to complete such required inspections during the review period. Regulatory authorities outside the U.S. may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic and may experience delays in their regulatory activities. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA or other regulatory authorities from conducting their regular inspections, reviews, or other regulatory activities, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, in our operations as a public company, future government shutdowns could impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

Risks Relating to the Integration of the Combined Company

We may not be able to successfully integrate and combine the businesses of Xeris and Strongbridge following the completion of the Transactions and we may not realize the anticipated benefits from the Transactions.

On October 5, 2021, we completed the previously announced acquisition and merger between Xeris Pharma and Strongbridge as contemplated by the Transaction Agreement, dated as of May 24, 2021, by and among us, Xeris, Strongbridge and Wells MergerSub, Inc. (the "Transaction Agreement"). We entered into the Transaction Agreement with the expectation that the Transactions will result in various benefits, including certain cost savings and operational efficiencies or synergies. To realize these anticipated benefits, the businesses of Xeris and Strongbridge must be successfully integrated. Historically, Xeris and Strongbridge have been independent companies. The integration process to date has been complex and time consuming and may require substantial additional resources and effort. If the companies are not successfully integrated, the anticipated benefits of the Transactions may not be realized fully (or at all) or may take longer to realize than expected. A variety of factors may adversely affect our ability to fully realize the expected operating synergies, savings and other benefits of the Transactions, including, without limitation:

- latent impacts resulting from the diversion of management team's attention from ongoing business concerns as a result of the devotion of management's attention to the Transactions;
- difficulties in achieving anticipated cost savings, synergies, business opportunities and growth prospects;
- the possibility of faulty assumptions underlying expectations regarding the integration process, including with respect to the intended tax efficient transactions;

- unanticipated issues, costs and strained resources in integrating information technology, communications programs, financial procedures and operations, and other systems, procedures and policies;
- difficulties in managing a larger combined company, addressing differences in business culture and retaining key personnel and employees;
- unanticipated changes in applicable laws and regulations;
- uncertainty that employees may experience about their roles within the combined company, which may have an additional adverse effect on our ability to attract or retain key management personnel and other key employees;
- coordinating geographically separate organizations; and
- failure to otherwise integrate Xeris' and Strongbridge's respective businesses.

Some of these factors will be outside of our control and any one of them could result in increased costs and diversion of management's time and energy, as well as decreases in the amount of expected revenue which could materially impact our business, financial conditions and results of operations. The integration process and other disruptions resulting from the Transactions may also adversely affect our relationships with employees, suppliers, customers, licensors and others, and difficulties in integrating the separate businesses or regulatory functions could harm the reputation of the combined company. If we are not able to adequately address integration challenges, we may be unable to successfully integrate our operations or realize the anticipated benefits of the Transactions.

Risks Related to Employment Matters

Our business could suffer if we lose the services of key members of our senior management or if we are not able to attract and retain other key employees and consultants.

We are dependent upon the continued services of key members of our executive management and a limited number of key advisors and personnel. In particular, we are highly dependent on the skills and leadership of our executive management team, including Paul Edick, our Chief Executive Officer, Steven Pieper, our Chief Financial Officer, Steven Prestrelski, our Chief Scientific Officer and Co-Founder, John Shannon, our President and Chief Operating Officer, Ken Johnson, our Senior Vice President, Global Development and Medical Affairs, and Beth Hecht, our Chief Legal Officer and Corporate Secretary. The loss of any one of these individuals could disrupt our operations or our strategic plans. Our industry has experienced a high rate of turnover of management personnel in recent years. Any of our personnel may terminate their employment at will. If we lose one or more of our executive officers or other key employees, our ability to implement our business strategy successfully could be seriously harmed. Furthermore, replacing executive officers or other key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to develop, gain marketing approval of and commercialize products successfully.

Additionally, our future success will depend on, among other things, our ability to continue to hire and retain the necessary qualified scientific, technical and managerial personnel, for whom we compete with numerous other companies, academic institutions and organizations. Competition to hire from this limited pool is intense, and we may be unable to hire, train, retain or motivate these additional key employees on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of scientific and clinical personnel from universities and research institutions.

We rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by other entities and may have commitments under consulting or advisory contracts with those entities that may limit their availability to us. If we are unable to continue to attract and retain highly qualified personnel, our ability to commercialize our products and to develop and commercialize our product candidates will be limited.

Risks Related to Our Common Stock

Risks Related to Investment in Securities

Our stock price has been and will likely continue to be volatile, and you may not be able to resell shares of our common stock at or above the price you paid.

The trading price of our common stock historically has been highly volatile and could continue to be subject to large fluctuations in response to the risk factors discussed in this section, and others beyond our control, including:

- our ability to successfully commercialize Gvoke, Keveyis and Recorlev;
- regulatory actions with respect to our products and product candidates;
- regulatory actions with respect to our competitors' products and product candidates;
- the success of existing or new competitive products or technologies;
- results of clinical trials of product candidates of our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, collaborations or capital commitments;
- the timing and results of clinical trials of our pipeline product candidates;
- commencement or termination of collaborations for our development programs;
- the results of our efforts to develop additional product candidates or products;
- the level of expenses related to any of our product candidates or clinical development programs;
- failure or discontinuation of any of our development programs;
- the pricing and reimbursement of Gvoke, Keveyis, Recorlev or any of our product candidates that may be approved;
- regulatory or legal developments in the United States and other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key personnel;
- actual or anticipated changes in estimates as to financial results or development timelines;
- announcement or expectation of additional financing efforts;
- sales of our common stock by us, our insiders or other stockholders;
- variations in our financial results or those of companies that are perceived to be similar to us;
- changes in estimates or recommendations by securities analysts, if any, that cover our stock;
- changes in the structure of healthcare payment systems;
- market conditions in the pharmaceutical and biotechnology sectors;
- general economic, industry and market conditions;
- global health concerns, such as the COVID-19 pandemic; and
- the other factors described in this "Risk Factors" section.

In recent years, the stock markets, and particularly the stock of smaller pharmaceutical and biotechnology companies, at times have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of affected companies. Broad market and industry factors may significantly affect the market price of our common stock unrelated to our actual operating performance. Since shares of our common stock were sold in our IPO in June 2018 at a price of $15.00 per share, our stock price has fluctuated significantly.

In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Securities litigation brought against us following volatility in our stock price, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management's attention and resources from our business.

The conversion of any of the Convertible Notes or other convertible securities into shares of common stock could have a dilutive effect that could cause our share price to go down.

We have a number of convertible securities outstanding, including CVRs, Convertible Notes and warrants, and the conversion of such securities into shares of our common stock could have a dilutive effect that could cause our share price to go down.

The Convertible Notes are convertible into shares of common stock at any time at the option of the holder subject to certain conditions. We have reserved a sufficient number of shares of common stock for issuance upon conversion of the Convertible Notes, CVRs and warrants. During the second half of 2020, $39.1 million in principal amount of Convertible Notes were converted into 13,171,791 shares of our common stock. As of March 31, 2022, the outstanding balance of Convertible Notes was $47.2 million. If any more or all of the Convertible Notes are converted into shares of common stock, our existing shareholders will experience

immediate dilution of voting rights and the price of shares of our common stock may decline. Furthermore, the perception that such dilution could occur may cause the market price of our common stock to decline. At any time before the close of business on the second scheduled trading day immediately before the maturity date, holders of Convertible Notes may convert their Convertible Notes at their option into shares of our common stock, together, if applicable, with cash in lieu of any fractional share, at the then-applicable conversion rate. The conversion rate for the Convertible Notes will initially be 326.7974 shares of our common stock per $1,000 principal amount of Convertible Notes, which represents an initial conversion price of approximately $3.06 per share of common stock, and is subject to adjustment under the terms of the Convertible Notes. In the event of certain circumstances, we will increase the conversion rate, provided that the conversion rate will not exceed 367.6470 shares of our common stock per $1,000 principal amount of Convertible Notes. Because the conversion rates of the Convertible Notes adjust upward upon the occurrence of certain events, our existing shareholders may experience more dilution if any or all of the Convertible Notes are converted into shares of common stock after the adjusted conversion rate became effective.

The CVRs represent contingent additional consideration of up to $1.00 for each CVR, payable to CVR holders, to satisfy future performance milestones, settleable in cash, common stock, or a combination of cash and common stock, at our sole election. If the performance milestones are met and we elect to pay the CVR consideration in common stock, it could have a dilutive effect to our earnings per share and cause our share price to go down.

Upon completion of the Acquisition, each outstanding and unexercised Strongbridge warrant (except private placement warrants) was assumed by the Company such that, upon exercise, the applicable holders will have the right to have delivered to them the reference property (as such term is defined in the Strongbridge assumed warrants). Each outstanding and unexercised Strongbridge private placement warrant was assumed by the Company such that the applicable holders will have the right to subscribe for the Company's Shares, in accordance with certain terms of the Strongbridge private placement warrants. The conversion of these warrants into shares of our common stock could have a dilutive effect that could cause our share price to go down.

We do not anticipate paying any cash dividends in the foreseeable future, and accordingly, our stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.

We do not anticipate declaring any cash dividends to holders of our common stock in the foreseeable future. In addition, under our Hayfin Loan Agreement, we are generally restricted from paying any dividends or making any distributions on account of our capital stock. Our ability to pay cash dividends also may be prohibited by future loan agreements. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not invest in our common stock.

Risks Related to Tax

We might not be able to utilize a significant portion of our net operating loss carryforwards and research and development tax credit carryforwards.

As of March 31, 2022, we had federal net operating loss carryforwards of $475.7 million and various state net operating loss carryforwards of $309.7 million. If not utilized, the federal net operating losses generated in taxable years beginning on or before December 31, 2017 will expire at various dates between 2025 and 2037, and these net operating loss carryforwards could expire unused and be unavailable to offset future income tax liabilities. Federal net operating losses generated in taxable years beginning after December 31, 2017 can be carried forward indefinitely; however, such net operating losses may only offset up to 80% of taxable income in taxable years beginning after March 31, 2022. As of March 31, 2022, we had $5.4 million and $2.5 million of federal and state income tax credits, respectively, to reduce future tax liabilities. If not utilized, the $5.4 million in federal income tax credits will begin to expire in 2025, and the $2.5 million of state research and development credits will begin to expire in 2022, and these tax credit carryforwards could expire unused and be unavailable to offset future income tax liabilities. In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended ("Code") and corresponding provisions of state law, if a corporation undergoes an "ownership change," which is generally defined as a greater than 50% change, by value, in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income may be limited. Our existing net operating losses or credits may be subject to limitations arising from previous ownership changes, and if we undergo future ownership changes, many of which may be outside of our control, our ability to utilize our net operating losses or credits could be further limited by Sections 382 and 383 of the Code. Accordingly, we may not be able to utilize a material portion of our net operating losses or credits.

Changes in tax law may adversely affect us or our investors.

The rules dealing with U.S. federal, state and local income taxation are constantly under review by persons involved in the legislative process and by the Internal Revenue Service ("IRS") and the U.S. Treasury Department. Changes to tax laws (which changes may have retroactive application) could adversely affect us or holders of our common stock. In recent years, many such changes have been made, and changes are likely to continue to occur in the future. It cannot be predicted whether, when, in what form or with what effective dates tax laws, regulations and rulings may be enacted, promulgated or issued, which could result in an increase in our or our shareholders' tax liability or require changes in the manner in which we operate in order to minimize or mitigate any adverse effects of changes in tax law.

Risks Related to our Indenture for our Convertible Notes, Charter and Bylaws

Provisions in the Indenture for our Convertible Notes and corporate charter documents and under Delaware law may prevent or frustrate attempts by our stockholders to change our management or hinder efforts to acquire a controlling interest in us.

Provisions in our corporate charter and our bylaws may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions:

- establish a classified board of directors such that all members of the board are not elected at one time; allow the authorized number of our directors to be changed only by resolution of our board of directors; and limit the manner in which stockholders can remove directors from the board;
- establish advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on at stockholder meetings;
- require that stockholder actions must be effected at a duly called stockholder meeting and prohibit actions by our stockholders by written consent;
- limit who may call a special meeting of stockholders;
- authorize our board of directors to issue preferred stock without stockholder approval, which could be used to institute a “poison pill” that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by our board of directors;
- require the approval of the holders of at least two-thirds of the votes that all our stockholders would be entitled to cast to amend or repeal certain provisions of our charter or bylaws; and
- provide that the Court of Chancery of the State of Delaware will be the exclusive forum for any state law derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty by one or more of our directors, officers or employees, any action asserting a claim against us pursuant to the Delaware General Corporation Law, or any action asserting a claim against us that is governed by the internal affairs doctrine, and that the United States District Court for the District of Illinois will be the exclusive forum for claims arising under the Securities Act of 1933, as amended (the "Securities Act").

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the General Corporation Law of the State of Delaware, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This could discourage, delay or prevent someone from acquiring us or merging with us, whether or not it is desired by, or beneficial to, our stockholders. This could also have the effect of discouraging others from making tender offers for our common stock, including transactions that may be in our stockholders’ best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock.

In addition, certain provisions in the Indenture governing our Convertible Notes could make a third-party attempt to acquire us more difficult or expensive. For example, if a takeover constitutes a fundamental change, then noteholders will have the right to require us to repurchase their notes for cash. In addition, if a takeover constitutes a make-whole fundamental change, then we may be required to temporarily increase the conversion rate. In either case, and in other cases, our obligations under the notes and the indenture could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management, including in a transaction that noteholders or holders of our common stock may view as favorable.

Our bylaws designate certain courts as the sole and exclusive forums for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees and may discourage such lawsuits with respect to such claims.

Our amended and restated bylaws provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any state law claim for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of or based on a fiduciary duty owed by any of our current or former directors, officers and employees to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, our certificate of incorporation or our bylaws, or (iv) any action asserting a claim that is governed by the internal affairs doctrine, in each case subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein (the “Delaware Forum Provision”). The Delaware Forum Provision will not apply to any causes of action arising under the Securities Act or the Securities Exchange Act of 1934, as amended. In addition, our amended and restated bylaws further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act (the “Federal Forum Provision”).

This forum selection provision may limit a shareholder's ability to bring a claim in a judicial forum that it finds favorable or cost-efficient for disputes with us or any of our directors, officers, employees or agents, which may discourage such lawsuits, or increase the costs to a shareholder of bringing such lawsuits, against us and such persons.

The enforceability of forum selection provisions in other companies' articles of incorporation, bylaws or similar governing documents has been challenged in legal proceedings, and it is possible that in connection with any action a court could find the forum selection provisions contained in our bylaws to be inapplicable or unenforceable in such action. If a court were to find these forum selection provisions inapplicable or unenforceable, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely impact our operating or financial condition or performance.

General Risk Factors

If we experience significant disruptions in our information technology systems, our business may be adversely affected.

We depend on our information technology systems for the efficient functioning of our business, including accounting, data storage, compliance, purchasing and inventory management. Our current systems are not fully redundant. While we will attempt to mitigate interruptions, we may experience difficulties in implementing some upgrades which would impact our business operations or experience difficulties in operating our business during the upgrade, either of which could disrupt our operations, including our ability to timely ship and track product orders, project inventory requirements, manage our supply chain and otherwise adequately service our customers. In the event we experience significant disruptions of our information technology systems, we may not be able to repair our systems in an efficient and timely manner. Accordingly, such events may disrupt or reduce the efficiency of our entire operation and have a material adverse effect on our results of operations and cash flows.

We are increasingly dependent on sophisticated information technology for our infrastructure. Our information systems require an ongoing commitment of significant resources to maintain, protect and enhance existing systems. Despite our implementation of security measures, our information systems, like those of other companies, are vulnerable to damages from computer viruses, natural disasters, unauthorized access, cyber attack, including ransomware, and other similar disruptions. Any system failure, accident or security breach could result in disruptions to our operations. For example, third parties may attempt to hack into systems and may obtain our proprietary information or other sensitive information, which could cause significant damage to our reputation, lead to claims against the Company and ultimately harm our business.

If products liability lawsuits are brought against us, our business may be harmed, and we may be required to pay damages that exceed our insurance coverage.

We may face liability claims related to the use or misuse of our products and product candidates. These claims may be expensive to defend and may result in large judgments against us. During the course of treatment, patients using our products and product candidates could suffer adverse medical effects for reasons that may or may not be related to our products and product candidates. Our products which are commercialized face greater risks and therefore, our risk will increase upon any commercialization by us of our product candidates. Any of these events could result in a claim of liability. Any such claims against us, regardless of their merit, could result in significant costs to defend or awards against us that could materially harm our business, financial condition or results of operations. In addition, any such claims against us could result in a distraction to management, decreased demand for our products, an adverse effect on our public reputation, and/or difficulties in commercializing our products. To date, we have not received notice of any products liability claims against us. We maintain total products liability insurance coverage of $15.0 million.

Although we maintain products liability insurance for claims arising from the use of our products after FDA approval and for claims arising from the use of our product candidates in clinical trials prior to FDA approval at levels that we believe are appropriate, we may not be able to maintain our existing insurance coverage or obtain additional coverage on commercially reasonable terms for the use of our other products and product candidates in the future. Also, our insurance coverage and resources may not be sufficient to satisfy any liability resulting from products liability claims, which could materially harm our business, financial condition or results of operations. In addition, we have in the past and may in the future agree to indemnify the counterparties from losses arising from claims relating to the products, processes or services made, used, sold or performed.

Should our obligation under an indemnification provision exceed applicable insurance coverage or if we were denied insurance coverage, our business, financial condition and results of operations could be adversely affected. Similarly, if we are relying on a collaborator to indemnify us and the collaborator is denied insurance coverage or the indemnification obligation exceeds the applicable insurance coverage and the collaborator does not have other assets available to indemnify us, our business, financial condition and results of operations could be adversely affected.

Products liability claims could result in an FDA or other regulatory authority investigation of the safety or efficacy of our products, our manufacturing processes and facilities, our marketing programs, our internal safety reporting systems or our staff conduct. A regulatory authority investigation could also potentially lead to a recall of our products or more serious enforcement actions, limitations on the indications for which they may be used, or suspension or withdrawal of approval. Products liability claims could also result in investigation, prosecution or enforcement action by the DOJ or other federal or state government agencies.

If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404 of the Sarbanes-Oxley Act, or any subsequent testing by our independent registered public accounting firm, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock.

We are required to disclose changes made in our internal controls and procedures on a quarterly basis, and our management is required to assess the effectiveness of these controls annually. However, for as long as we are an "emerging growth company" under the Jumpstart Our Business Startups Act ("JOBS Act") enacted in April 2012, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act. We could be an "emerging growth company" for up to five years from the date of our IPO. An independent assessment of the effectiveness of our internal controls over financial reporting could detect problems that our management's assessment might not. Undetected material weaknesses in our internal controls over financial reporting could lead to financial statement restatements and require us to incur the expense of remediation.

As a result of being a public company, we will continue to incur significant additional costs which may adversely affect our operating results and financial condition.

We expect to continue to incur costs associated with corporate governance requirements, including requirements under the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, as well as rules implemented by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, the SEC and The Nasdaq Global Select Market. These rules and regulations have increased our accounting, legal and financial compliance costs and make some activities more time consuming and costly. In addition, we will continue to incur costs associated with our public company reporting requirements, and we expect those costs may increase in the future. For example, we have devoted and expect to continue to devote significant resources to complete the assessment and documentation of our internal controls over financial reporting under Section 404 of the Sarbanes-Oxley Act, including assessment of the design and effectiveness of our internal controls related to our information systems.

During the course of our ongoing review and testing of our internal controls, we may identify deficiencies and may incur significant costs to remediate such deficiencies, including material weaknesses, if any, that we identify through these efforts. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

New laws and regulations, as well as changes to existing laws and regulations affecting public companies, including the provisions of the Sarbanes-Oxley Act, the Dodd-Frank Act and rules adopted by the SEC and The Nasdaq Global Select Market, would likely result in increased costs to us as we respond to their requirements, which may adversely affect our operating results and financial condition.

Securities analysts may publish inaccurate or unfavorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.

The trading market for our common stock is influenced by the research and reports that industry or financial analysts publish about us and our business. We do not control these analysts. Analysts who publish information about our common stock may have relatively little experience with our company, which could affect their ability to accurately forecast our results and could make it more likely that we fail to meet their estimates. If any of the analysts who cover us provide inaccurate or unfavorable research or issue an adverse opinion regarding our stock price, our stock price could decline. If one or more of these analysts cease coverage of our company or fail to publish reports covering us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

We could be subject to securities class action litigation.

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because biotechnology and pharmaceutical companies have experienced significant stock price volatility in recent years. If we face this type of litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business.

We are an "emerging growth company" and a "smaller reporting company," and the reduced disclosure requirements applicable to "emerging growth companies" and "smaller reporting companies" may make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), and we have elected to take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not "emerging growth companies." In particular, while we are an "emerging growth company," (i) we will not be

required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, (ii) we will be exempt from any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor's report on financial statements, (iii) we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and (iv) we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved.

As a result, our public filings may not be comparable to companies that are not "emerging growth companies". We may remain an "emerging growth company" until the fiscal year-end following the fifth anniversary of the completion of our IPO, though we may cease to be an "emerging growth company" earlier under certain circumstances, including (i) if the market value of our common stock that is held by non-affiliates exceeds $700 million as of any June 30, in which case we would cease to be an "emerging growth company" as of the following January 1, (ii) the date on which we have issued more than $1.0 billion in non-convertible debt during the previous three years, or (iii) if our gross revenue exceeds $1.07 billion in any fiscal year.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. In addition, we qualify as a "smaller reporting company," which allows us to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. Even after we no longer qualify as an "emerging growth company," we may still qualify as a "smaller reporting company" if the market value of our common stock that is held by non-affiliates is below $250 million (or $700 million if our annual revenue is less than $100 million) as of June 30 in any given year, which would allow us to continue to take advantage of these exemptions.

Investors may find our common stock less attractive if we rely on these exemptions and relief granted by the JOBS Act. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline and/or become more volatile.

Our data collection and processing activities are governed by restrictive regulations governing the use, processing and, in certain jurisdictions, cross-border transfer of personal information.

We may be subject to European, UK, US federal, state, and foreign data protection laws and regulations (i.e., laws and regulations that address privacy and data security). We have personnel located in Ireland and have conducted and may in the future conduct clinical trials in the European Union ("EU") and/or the United Kingdom ("UK") subjecting us to additional privacy restrictions and data protection requirements. The collection and use of personal health data in the EU are governed by the provisions of the General Data Protection Regulation ("GDPR"), as well as other national data protection legislation in force in relevant Member States (including the UK GDPR and the Data Protection Act 2018 in the UK). These laws impose a broad range of strict requirements on companies subject to the GDPR, such as including requirements relating to having legal bases for processing personal data relating to identifiable individuals and transferring such information outside the European Economic Area, or EEA (or in the case of the UK GDPR, outside of the UK), providing details to those individuals regarding the processing of their personal data, implementing safeguards to keep personal data secure, having data processing agreements with third parties who process personal data, providing information to individuals regarding data processing activities, responding to individuals' requests to exercise their rights in respect of their personal data, obtaining consent of the individuals to whom the personal data relates, reporting security and privacy breaches involving personal data to the competent national data protection authority and affected individuals, appointing data protection officers, conducting data protection impact assessments, and record-keeping. The GDPR may impose additional responsibility and liability in relation to personal data that we process and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. This may be onerous and adversely affect our business, financial condition, results of operations and prospects. Although the UK is regarded as a third country under the EU's GDPR, the European Commission has now issued a decision recognizing the UK as providing adequate protection under the EU GDPR and, therefore, transfers of personal data originating in the EU to the UK remain unrestricted. Like the EU GDPR, the UK GDPR restricts personal data transfers outside the UK to countries not regarded by the UK as providing adequate protection. The UK government has confirmed that personal data transfers from the UK to the EEA remain free flowing.

To enable the transfer of personal data outside of the EEA or the UK, adequate safeguards must be implemented in compliance with European and UK data protection laws. On June 4, 2021, the EC issued new forms of standard contractual clauses for data transfers from controllers or processors in the EU/EEA (or otherwise subject to the GDPR) to controllers or processors established outside the EU/EEA (and not subject to the GDPR). The new standard contractual clauses replace the standard contractual clauses that were adopted previously under the EU Data Protection Directive. The UK is not subject to the European Commission's new standard contractual clauses but has published a draft version of a UK-specific transfer mechanism, which, once finalized, will enable transfers from the UK. Following a ruling from the Court of Justice of the European Union, in Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems ('Schrems II'), Case C-311/18 ("Schrems II"), companies relying on standard contractual clauses to govern transfers of personal data to third countries (in particular the United States) will need to assess whether the data importer can ensure sufficient guarantees for safeguarding the personal data under GDPR. This assessment includes assessing whether third party vendors can also ensure these guarantees. We will be required to implement these new safeguards when conducting restricted data transfers under the EU and UK GDPR and doing so will require significant effort and cost.

If we are investigated by a European data protection authority, we may face fines and other penalties, including bans on processing and transferring personal data. EU data protection authorities have the power to impose administrative fines for violations of the GDPR of up to a maximum of €20 million or 4% of the data controller's or data processor's total worldwide global turnover for the preceding fiscal year, whichever is higher, and violations of the GDPR may also lead to damages claims by data controllers and data subjects. Such penalties are in addition to any civil litigation claims by data controllers, clients, and data subjects. As such, we will need to take steps to cause our processes to continue to be compliant with the applicable portions of the GDPR, but we cannot assure you that we will be able to implement changes in a timely manner or without significant disruption to our business, or that such steps will be effective, and we may face the risk of liability under the GDPR.

Similarly, non-compliance with the UK GDPR may result in monetary penalties of up to £17.5 million or 4% of worldwide revenue, whichever is higher.

Although the EU GDPR and the UK GDPR currently impose substantially similar obligations, it is possible that over time the UK GDPR could become less aligned with the EU GDPR. This lack of clarity on future UK laws and regulations and their interaction with EU laws and regulations could add legal risk, uncertainty, complexity and cost to our handling of EU personal information and our privacy and data security compliance programs and could require us to implement different compliance measures for the UK and the European Union.

Many jurisdictions outside of Europe where we may do business or conduct trials in the future are also considering and/or have enacted comprehensive data protection legislation. In addition, we also continue to see jurisdictions imposing data localization laws. These and similar regulations may interfere with our intended business activities, inhibit our ability to expand into those markets, require modifications to our products or services or prohibit us from continuing to offer services or conduct trials in those markets without significant additional costs.

Our employees, independent contractors, consultants, collaborators and CROs may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements, which could cause significant liability for us and harm to our reputation.

We are exposed to the risk that our employees, independent contractors, consultants, collaborators and CROs may engage in fraud or other misconduct, including intentional failures to comply with FDA regulations or similar regulations of comparable non-U.S. regulatory authorities, to provide accurate information to the FDA or comparable non-U.S. regulatory authorities, to comply with manufacturing standards we have established, to comply with federal and state healthcare fraud and abuse laws and regulations and similar laws and regulations established and enforced by comparable non-U.S. regulatory authorities, to report financial information or data accurately or to disclose unauthorized activities to us. Such misconduct could also involve the improper use or misrepresentation of information obtained in the course of clinical trials, creating fraudulent data in our preclinical studies or clinical trials or illegal misappropriation of product materials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws, standards or regulations. Additionally, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other sanctions.

Global economic uncertainty and weakening product demand caused by political instability, changes in trade agreements and conflicts, such as the conflict between Russia and Ukraine, could adversely affect our business and financial performance.

Economic uncertainty in various global markets caused by political instability and conflict and economic challenges caused by the COVID-19 pandemic has resulted, and may continue to result, in weakened demand for our products. Political developments impacting government spending and international trade, including potential government shutdowns and trade disputes and tariffs, may negatively impact markets and cause weaker macro-economic conditions. The effects of these events may continue due to potential U.S. government shutdowns and the transition in administrations, and the United States' ongoing trade disputes with China and other countries. In addition, the current military conflict between Russia and Ukraine could disrupt or otherwise adversely impact our operations and related sanctions, export controls or other actions that may be initiated by nations including the U.S., the European Union or Russia (e.g., potential cyberattacks, disruption of energy flows, etc.) could adversely affect our business and/or our supply chain or those of our third party service providers. The United States and other countries could impose wider sanctions and take other actions should the conflict further escalate. It is not possible to predict the broader consequences of this conflict, which could include further sanctions, embargoes, regional instability, prolonged periods of higher inflation, geopolitical shifts, and adverse effects on macroeconomic conditions, currency exchange rates, and financial markets, all of which could have a material adverse effect on our business, financial condition, and results of operations. The continuing effect of any or all of these events could adversely impact demand for our products, harm our operations and weaken our financial results.

Our operations are subject to the effects of a rising rate of inflation.

The United States has recently experienced historically high levels of inflation. If the inflation rate continues to increase, for example due to increases in the costs of labor and supplies, it will affect our expenses, such as employee compensation and research and development expenses. Additionally, the United States is experiencing an acute workforce shortage, which in turn, has created a very

competitive wage environment that may increase our operating costs. To the extent inflation results in rising interest rates and has other adverse effects on the market, it may adversely affect our financial condition and results of operations.

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

On May 11, 2022, we entered into an Open Market Sale Agreement℠, or Sales Agreement, with Jefferies, LLC, or Jefferies, pursuant to which we may offer and sell, from time to time at our sole discretion, shares of our common stock, par value $0.0001 per share, having an aggregate offering price of up to $75.0 million through Jefferies as sales agent. Jefferies may sell the shares under such Sales Agreement by any method permitted by law deemed to be "at the market offerings" as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended. Jefferies will use commercially reasonable efforts to sell the shares from time to time, based upon instructions from us (including any price, time or size limits or other customary parameters or conditions we may impose). We will pay Jefferies a commission rate of up to 3.0% of the gross sales price per share of common stock sold through Jefferies under the Sales Agreement, and we have also provided Jefferies with customary indemnification rights. We are not obligated to make any sales of our common stock under the Sales Agreement. The offering of shares of our common stock pursuant to the Sales Agreement will terminate upon the earlier of (i) the sale of all shares of common stock subject to the Sales Agreement and (ii) the termination of the Sales Agreement as permitted therein.

The foregoing description of the Sales Agreement is qualified in its entirety by reference to the complete text of such agreement, a copy of which is attached hereto as Exhibit 1.1 to this Quarterly Report on Form 10-Q and incorporated herein by reference. The legal opinion of Goodwin Procter LLP relating to the shares of our common stock being offered pursuant to the Sales Agreement is filed as Exhibit 5.1 to this Quarterly Report on Form 10-Q.

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

Exhibit No.	Description
1.1*	Open Market Sale Agreement℠, dated as of May 11, 2022, by and between the Registrant and Jefferies LLC
4.1*	Form of Warrant to purchase common stock by and between the Registrant and Hayfin Services LLP
4.2	Form of Warrant by and between the Registrant and Armistice Capital Master Fund Ltd. (Incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K (File No. 001-40880) filed with the Securities and Exchange Commission on January 3. 2022
4.3	Form of Registration Rights Agreement between the Registrant and Armistice Capital Master Fund Ltd. dated as of January 2, 2022 (Incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K (File No. 001-40880) filed with the Securities and Exchange Commission on January 3. 2022)
5.1*	Opinion of Goodwin Procter LLP
10.1#*	Amended and Restated Employment Agreement by and among the Registrant, Xeris Pharmaceuticals, Inc. and Beth Hecht dated as of October 5, 2021
10.2*	Credit Agreement and Guaranty dated as of March 8, 2022, 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
10.3	Form of Securities Purchase Agreement between the Registrant and Armistice Capital Master Fund Ltd. dated as of January 2, 2022 (Incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K (File No. 001-04880) filed with Securities and Exchange Commission on January 3, 2022)
23.1	Consent of Goodwin Procter LLP (contained in its opinion filed as Exhibit 5.1 and incorporated by reference herein)
31.1*	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
31.2*	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
32.1+	Certification of Periodic Financial Report by the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
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.

Xeris Biopharma Holdings, Inc.

Date: May 11, 2022

By /s/ Paul R. Edick

Paul R. Edick
Chief Executive Officer and Chairman
(Principal Executive Officer)

Date: May 11, 2022

By /s/ Steven M. Pieper

Steven M. Pieper
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 1.1

OPEN MARKET SALE AGREEMENT[SM]

May 11, 2022

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

Ladies and Gentlemen:

Xeris Biopharma Holdings, Inc., a Delaware corporation (the "**Company**"), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through Jefferies LLC, as sales agent and/or principal (the "**Agent**"), shares of the Company's common stock, par value $0.0001 per share (the "**Common Shares**"), having an aggregate offering price of up to $75,000,000, on the terms set forth in this agreement (this "**Agreement**").

Section 1. DEFINITIONS

(a) Certain Definitions. For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:

"**Affiliate**" of a Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first- mentioned Person. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agency Period**" means the period commencing on the date of this Agreement and expiring on the earliest to occur of (x) the date on which the Agent shall have placed the Maximum Program Amount pursuant to this Agreement and (y) the date this Agreement is terminated pursuant to Section 7.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

"**Floor Price**" means the minimum price set by the Company in the Issuance Notice below which the Agent shall not sell Shares during the applicable period set forth in the Issuance Notice, which may be adjusted by the Company at any time during the period set forth in the Issuance Notice by delivering written notice of such change to the Agent and which in no event shall be less than $1.00 without the prior written consent of the Agent, which may be withheld in the Agent's sole discretion.

"**Issuance Amount**" means the aggregate Sales Price of the Shares to be sold by the Agent pursuant to any Issuance Notice.

"**Issuance Notice**" means a written notice delivered to the Agent by the Company in accordance with this Agreement in the form attached hereto as Exhibit A that is executed by its Chief Executive Officer, President or Chief Financial Officer.

"**Issuance Notice Date**" means any Trading Day during the Agency Period that an Issuance Notice is delivered pursuant to Section 3(b)(i).

"**Issuance Price**" means the Sales Price less the Selling Commission.

"**Maximum Program Amount**" means Common Shares with an aggregate Sales Price of the lesser of (a) the number or dollar amount of Common Shares registered under the effective Registration Statement (defined below) pursuant to which the offering is being made, (b) the number of authorized but unissued Common Shares (less Common Shares issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company's authorized capital stock), (c) the number or dollar amount of Common Shares permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable), or (d) the number or dollar amount of Common Shares for which the Company has filed a Prospectus (defined below).

"**Person**" means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

"**Principal Market**" means The Nasdaq Global Select Market or such other national securities exchange on which the Common Shares, including any Shares, are then listed.

"**Sales Price**" means the actual sale execution price of each Share placed by the Agent pursuant to this Agreement.

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

"**Selling Commission**" means three percent (3%) of the gross proceeds of Shares sold pursuant to this Agreement, or as otherwise agreed between the Company and the Agent with respect to any Shares sold pursuant to this Agreement.

"**Settlement Date**" means the second business day following each Trading Day during the period set forth in the Issuance Notice on which Shares are sold pursuant to this Agreement, when the Company shall deliver to the Agent the amount of Shares sold on such Trading Day and the Agent shall deliver to the Company the Issuance Price received on such sales.

"**Shares**" means the Company's Common Shares issued or issuable pursuant to this Agreement.

"**Trading Day**" means any day on which the Principal Market is open for trading.

Section 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to, and agrees with, the Agent that as of (1) the date of this Agreement, (2) each Issuance Notice Date, (3) each Settlement Date, (4) each Triggering Event Date and (5) as of each Time of Sale (each of the times referenced above is referred to herein as a "**Representation Date**"), except as may be disclosed in the Prospectus (including any

documents incorporated by reference therein and any supplements thereto) on or before a Representation Date:

(a) Registration Statement. The Company has prepared and filed with the Commission a shelf registration statement on Form S-3 that contains a base prospectus (the "**Base Prospectus**"). Such registration statement registers the issuance and sale by the Company of the Shares under the Securities Act. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable, with respect to the Shares. Except where the context otherwise requires, such registration statement(s), including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, including all financial statements, exhibits and schedules thereto and all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act as from time to time amended or supplemented, is herein referred to as the "**Registration Statement**," and the prospectus constituting a part of such registration statement(s), together with any prospectus supplement filed with the Commission pursuant to Rule 424(b) under the Securities Act relating to a particular issuance of the Shares, including all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act, in each case, as from time to time amended or supplemented, is referred to herein as the "**Prospectus**," except that if any revised prospectus is provided to the Agent by the Company for use in connection with the offering of the Shares that is not required to be filed by the Company pursuant to Rule 424(b) under the Securities Act, the term "**Prospectus**" shall refer to such revised prospectus from and after the time it is first provided to the Agent for such use. The Registration Statement at the time it originally became effective is herein called the "**Original Registration Statement**." As used in this Agreement, the terms "amendment" or "supplement" when applied to the Registration Statement or the Prospectus shall be deemed to include the filing by the Company with the Commission of any document under the Exchange Act after the date hereof that is or is deemed to be incorporated therein by reference.

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include, without limitation, the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date.

At the time the Registration Statement was or will be originally declared effective and at the time the Company's most recent annual report on Form 10-K was filed with the Commission, if later, the Company met the then-applicable requirements for use of Form S-3 under the Securities Act. During the Agency Period, each time the Company files an annual report on Form 10-K the Company will meet the then-applicable requirements for use of Form S-3 under the Securities Act.

(b) Compliance with Registration Requirements. The Original Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information, if

any. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

The Prospectus when filed complied in all material respects with the Securities Act and, if filed with the Commission through its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**") (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Agent for use in connection with the issuance and sale of the Shares. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became effective and at each Representation Date, complied and will comply in all material respects with the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the date of this Agreement, the Prospectus and any Free Writing Prospectus (as defined below) considered together (collectively, the "**Time of Sale Information**") did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Prospectus, as amended or supplemented, as of its date and at each Representation Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the three immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with written information relating to the Agent furnished to the Company in writing by the Agent expressly for use therein, it being understood and agreed that the only such information furnished by the Agent to the Company consists of the information described in Section 6 below. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required. The Registration Statement and the offer and sale of the Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said rule.

(c) Ineligible Issuer Status. The Company is not an "ineligible issuer" in connection with the offering of the Shares pursuant to Rules 164, 405 and 433 under the Securities Act. Any Free Writing Prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act. Each Free Writing Prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of Rule 433 under the Securities Act including timely filing with the Commission or retention where required and legending, and each such Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the issuance and sale of the Shares did not, does not and will not include any information that conflicted, conflicts with or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein. Except for the Free Writing Prospectuses, if any, and electronic road shows, if any, furnished to the Agent before first use, the Company has not prepared, used or referred to, and will not, without the Agent's prior written consent, prepare, use or refer to, any Free Writing Prospectus.

(d) Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, at the time they were filed with the Commission, complied in all material respects with the requirements of the Exchange Act, as applicable, and, when read together with the other information in the Prospectus, do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) Exchange Act Compliance. The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, and any Free Writing Prospectus or amendment or supplement thereto complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto become effective and at each Time of Sale (as defined below), as the case may be, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(f) Emerging Growth Company Status. From the time of filing of the Registration Statement with the Commission through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Securities Act (an "**Emerging Growth Company**").

(g) Statistical and Market-Related Data. All statistical, demographic and market-related data included in the Registration Statement or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate. To the extent required, the Company has obtained the written consent for the use of such data from such sources.

(h) Disclosure Controls and Procedures; Deficiencies in or Changes to Internal Control Over Financial Reporting. The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared (it being understood that neither subsection (o) nor this subsection (h) requires the Company to comply with Section 404 of the Sarbanes Oxley Act of 2002 as of an earlier date than it would otherwise be required to so comply under applicable law); (ii) have been evaluated by management of the Company for effectiveness as of the end of the Company's most recent fiscal quarter; and (iii) are effective in all material respects to perform the functions for which they were established. Except as described in the Prospectus, since the end of the Company's most recent audited fiscal year, there have been no significant deficiencies or material weaknesses in the Company's internal control over financial reporting (whether or not remediated) and no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is not aware of any change in its internal control over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(i) This Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(j) Authorization of the Shares. The Shares have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company against payment therefor pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and the issuance and sale of the Shares is not subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase the Shares.

(k) No Applicable Registration or Other Similar Rights. There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

(l) No Material Adverse Change. Except as otherwise disclosed in the Registration Statement and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus: (i) there has been no material adverse change, or any development that would reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, properties, operations, assets, liabilities or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity (any such change being referred to herein as a "**Material Adverse Change**"); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, including without limitation any losses or interference with their business from fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that are material, individually or in the aggregate, to the Company and its subsidiaries, considered as one entity, and have not entered into any transactions not in the ordinary course of business; and (iii) there has not been any material decrease in the capital stock or any material increase in any short-term or long-term indebtedness of the Company or its subsidiaries and there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, by any of the Company's subsidiaries on any class of capital stock, or any repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(m) Independent Accountants. Each of KPMG LLP and Ernst & Young LLP, which have each expressed their respective opinions with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) of the Company and Strongbridge Biopharma Limited (f/k/a Strongbridge Biopharma plc, "**Strongbridge**"), respectively, in each case filed with the Commission as a part of the Registration Statement and the Prospectus, is (i) an independent registered public accounting firm as required by the Securities Act, the Exchange Act, and the rules of the Public Company Accounting Oversight Board ("**PCAOB**"), (ii) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Securities Act and (iii) a registered public accounting firm as defined by the PCAOB whose registration has not been suspended or revoked and who has not requested such registration to be withdrawn.

(n) Financial Statements. The financial statements filed with the Commission as a part of the Registration Statement and the Prospectus present fairly in all material respects the financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations, changes in stockholders' equity and cash flows for the periods specified. Such financial statements have been prepared in conformity with U.S. generally accepted accounting

principles applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto and except in the case of unaudited financial statements, which are subject to normal and recurring year-end adjustments and do not contain certain footnotes as permitted by the applicable rules of the Commission. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines. No other financial statements or supporting schedules are required to be included in the Registration Statement or the Prospectus. The pro forma condensed combined financial statements of the Company and its subsidiaries and the related notes thereto included or incorporated by reference in the Registration Statement or the Prospectus present fairly the information contained therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. The disclosures contained in the Registration Statement, the Prospectus and any free writing prospectus that constitute non-GAAP financial measures (as defined by the rules and regulations under the Securities Act and the Exchange Act) in all material respects comply with Regulation G under the Exchange Act and Item 10 of Regulation S-K under the Securities Act, as applicable. To the Company's knowledge, no person who has been suspended or barred from being associated with a registered public accounting firm, or who has failed to comply with any sanction pursuant to Rule 5300 promulgated by the PCAOB, has participated in or otherwise aided the preparation of, or audited, the financial statements, supporting schedules or other financial data filed with the Commission as a part of the Registration Statement and the Prospectus.

(o) Company's Accounting System. The Company and each of its subsidiaries make and keep books and records that are accurate in all material respects and maintain a system of internal accounting controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto.

(p) Incorporation and Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement. The Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of Illinois and each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so qualified or be in good standing would not reasonably be expected, individually or in the aggregate, to result in a material adverse effect on the condition (financial or otherwise), earnings, business, properties, operations, assets, liabilities or prospects, whether or not arising

from transactions in the ordinary course of business, of the Company (a "**Material Adverse Effect**").

(q) Subsidiaries. Each of the Company's "subsidiaries" (for purposes of this Agreement, as defined in Rule 405 under the Securities Act) has been duly incorporated or organized, as the case may be, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and has the power and authority (corporate or other) to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus. Each of the Company's subsidiaries is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business. All of the issued and outstanding capital stock or other equity or ownership interests of each of the Company's subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or adverse claim. None of the outstanding capital stock or equity interest in any subsidiary was issued in violation of preemptive or similar rights of any security holder of such subsidiary. The constitutive or organizational documents of each of the subsidiaries comply in all material respects with the requirements of applicable laws of its jurisdiction of incorporation or organization and are in full force and effect. The Company does not own or control, directly or indirectly, any corporation, association or other entities other than the subsidiaries listed in Exhibit 21.1 to the Company's most recently filed Annual Report on Form 10-K.

(r) Capitalization and Other Capital Stock Matters. The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement and the Prospectus under the caption "Capitalization" (other than for subsequent issuances, if any, pursuant to employee benefit plans, or upon the exercise of outstanding options or warrants, in each case described in the Registration Statement and the Prospectus). The Common Shares (including the Shares) conform in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding Common Shares have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with all applicable federal and state securities laws. None of the outstanding Common Shares was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in the Registration Statement and the Prospectus. The descriptions of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement and the Prospectus accurately and fairly presents in all material respects the information required to be shown with respect to such plans, arrangements, options and rights.

(s) Stock Exchange Listing. The Common Shares are registered pursuant to Section 12(b) or 12(g) of the Exchange Act and are listed on the Principal Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act or delisting the Common Shares from the Principal Market, nor has the Company received any notification that the Commission or the Principal Market is contemplating terminating such registration or listing. To the Company's knowledge, it is in compliance with all applicable listing requirements of the Principal Market.

(t) Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, or is in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, loan, credit agreement, note, lease, license agreement, contract, franchise or other instrument (including, without limitation, any pledge agreement, security agreement, mortgage or other instrument or agreement evidencing, guaranteeing, securing or relating to indebtedness) to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of their respective properties or assets are subject (each, an "**Existing Instrument**"), except for such Defaults as would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect. The Company's execution, delivery and performance of this Agreement, consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus and the issuance and sale of the Shares (including the use of proceeds from the sale of the Shares as described in the Registration Statement and the Prospectus under the caption "Use of Proceeds") (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, of the Company or any subsidiary (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any of its subsidiaries, except for such conflicts, breaches, Defaults, liens, charges, encumbrances or violations specified to subsections (ii) and (iii) above that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act and such as may be required under applicable state securities or blue sky laws or FINRA (as defined below). As used herein, a "**Debt Repayment Triggering Event**" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(u) No Material Actions or Proceedings. There is no action, suit, proceeding, inquiry or investigation brought by or before any governmental entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which if determined adversely to the Company or any of its subsidiaries would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or materially and adversely affect the consummation of the transactions contemplated by this Agreement or the performance by the Company of its obligations hereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is the subject, including ordinary routine litigation incidental to the business, if determined adversely to the Company or any of its subsidiaries, would not reasonably be expected to have a Material Adverse Effect. No material labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is threatened or imminent.

(v) Intellectual Property Rights. The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, the inventions, patent applications, patents, trademarks, trade names, service names, copyrights, trade secrets and other intellectual property described in the Registration Statement and the Prospectus as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as currently proposed to be conducted as described in the Registration Statement and the Prospectus, except where the failure to own or license such rights would not, individually or in the aggregate, have a Material Adverse Effect (collectively, "**Intellectual Property**"). To the Company's knowledge: (i) there are no third parties who have rights to any Intellectual Property, except for customary reversionary rights of third-party licensors with respect to Intellectual Property that is disclosed in the Registration Statement and the Prospectus as licensed to the Company or one or more of its subsidiaries; and (ii) there is no infringement by third parties of any Intellectual Property. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others: (A) challenging the Company's rights in or to any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (B) challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; or (C) asserting that the Company or any of its subsidiaries infringes or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement or the Prospectus as under development, infringe or violate, any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim. The Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any subsidiary, and all such agreements are in full force and effect. The product candidates described in the Registration Statement and the Prospectus as under development by the Company or any subsidiary fall within the scope of the claims of one or more patents owned by, or licensed to, the Company or any subsidiary.

(w) All Necessary Permits, etc. The Company and each subsidiary possess, or qualify for applicable exemptions to, such valid and current certificates, authorizations or permits required by state, federal or foreign regulatory agencies or bodies to conduct their respective businesses as currently conducted and as described in the Registration Statement or the Prospectus ("**Permits**"), except where the failure to possess or obtain the same or so qualify would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries is in violation of or in default under, any of the Permits or has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any of the Permits, except for any such violations, defaults, or proceedings relating to the revocation or modification of, or non-compliance with, any such Permits that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(x) Title to Properties. Except as described in the Registration Statement or the Prospectus, each of the Company and its subsidiaries has good and marketable title to all of the real and personal property and other assets reflected as owned in the financial statements referred to in Section 2(n) above (or elsewhere in the Registration Statement or the Prospectus), in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, adverse claims and other defects, except such as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The real property, improvements, equipment and personal property held under lease by the Company or any of its subsidiaries are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere

with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or any such subsidiaries.

(y) Tax Law Compliance. The Company and its subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns or have properly requested extensions thereof and have paid all material taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 2(n) above in respect of all material federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its subsidiaries has not been finally determined.

(z) Company Not an "Investment Company." The Company is not, and will not be, either after receipt of payment for the Shares or after the application of the proceeds therefrom as described under "Use of Proceeds" in the Registration Statement or the Prospectus, required to register as an "investment company" under the Investment Company Act of 1940, as amended (the **"Investment Company Act")**.

(aa) Insurance. Each of the Company and its subsidiaries are insured by recognized and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes and policies covering the Company and its subsidiaries for product liability claims and clinical trial liability claims. The Company has no reason to believe that it or any of its subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(bb) No Price Stabilization or Manipulation; Compliance with Regulation M. Neither the Company nor any of its subsidiaries has taken, directly or indirectly, without giving effect to activities by the Agent, any action designed to or that might cause or result in stabilization or manipulation of the price of the Common Shares or of any "reference security" (as defined in Rule 100 of Regulation M under the Exchange Act ("**Regulation M**")) with respect to the Common Shares, whether to facilitate the sale or resale of the Shares or otherwise, and has taken no action which would directly or indirectly violate Regulation M.

(cc) Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any other person required to be described in the Registration Statement or the Prospectus which have not been described as required.

(dd) FINRA Matters. All of the information provided to the Agent or to counsel for the Agent by the Company, its counsel, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Shares is true, complete, correct and compliant with Financial Industry Regulatory Authority, Inc.'s ("**FINRA**") rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules or NASD Conduct Rules is true,

complete and correct. The Company meets the requirements for use of Form S-3 under the Securities Act specified in FINRA Rule 5110(b)(7)(C)(i).

(ee) No Unlawful Contributions or Other Payments. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Registration Statement and the Prospectus.

(ff) Compliance with Environmental Laws. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"), (ii) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (iii) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(gg) ERISA Compliance. The Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "**ERISA**")) established or maintained by the Company, its subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "**ERISA Affiliate**" means, with respect to the Company or any of its subsidiaries, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "**Code**") of which the Company or such subsidiary is a member. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) no "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates; (ii) no "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA); and (iii) neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (x) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (y) Sections 412, 4971, 4975 or 4980B of the Code. Each "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the Internal Revenue

Service or has time remaining to do so and, to the knowledge of the Company, nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(hh) Brokers. Except pursuant to this Agreement, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(ii) Compliance with Laws. The Company and its subsidiaries have been and are in compliance with all applicable laws, rules and regulations, except where failure to be so in compliance would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(jj) Anti-Corruption and Anti-Bribery Laws**.** Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any domestic government official, "foreign official" (as defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "**FCPA**") or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA or any applicable non-U.S. anti-bribery statute or regulation; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, such foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(kk) Money Laundering Laws. The operations of the Company and its subsidiaries are, and have been conducted at all times, in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ll) Clinical Data and Regulatory Compliance**.** The preclinical tests and clinical trials, and other studies (collectively, "studies") that are described in, or the results of which are referred to in, the Registration Statement or the Prospectus were and, if still pending, are being conducted in all material respects in accordance with the protocols, procedures and controls designed and approved for such studies and with standard medical and scientific research procedures and all applicable laws and regulations, including, without limitation, 21 C.F.R. Parts 50, 54, 56, 58, 312 and 812; each description of the results of such studies is accurate and complete in all material respects and fairly presents the data derived from such studies, and the Company and its subsidiaries have no knowledge of any other studies the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Registration Statement or the Prospectus; the Company and its subsidiaries have made all such filings and obtained all such approvals as may be required by the Food and Drug Administration of the U.S. Department of Health and Human Services or from any other U.S. or foreign

government or drug or medical device regulatory agency, or health care facility Institutional Review Board (collectively, the "**Regulatory Agencies**"); neither the Company nor any of its subsidiaries has received any written notice of, or correspondence from, any Regulatory Agency requiring the termination, suspension or material modification of any clinical trials that are described or referred to in the Registration Statement or the Prospectus; and the Company and its subsidiaries have each operated and currently are in compliance in all material respects with all applicable rules and regulations of the Regulatory Agencies.

(mm) Sanctions. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company any director, officer, agent, employee, affiliate or person acting on behalf of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"); and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that currently is the subject to any U.S. sanctions administered by OFAC or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of U.S. sanctions administered by OFAC.

(nn) Cybersecurity. There has been no security breach or other compromise of or relating to any of the information technology and computer systems, networks, hardware, software, data (including the data of its customers, employees, suppliers, vendors and any third party data maintained by or on behalf of the Company or any of its subsidiaries), equipment or technology owned, held or used by or for the Company or any of its subsidiaries (collectively, the "**IT Systems and Data**"), except for those that have been remedied without material cost or liability or the duty to notify any other person, nor are there any incidents under internal review or investigations relating to the same and (y) neither the Company nor any of its subsidiaries have been notified of, and has no knowledge of any event or condition that would reasonably be expected to result in, any material security breach or other material compromise to the IT Systems and Data; (ii) the Company and its subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to (x) the collection, use, transfer, storage, protection, disposal and/or disclosure of personally identifiable information collected from or provided by third parties, (y) the privacy and security of the IT Systems and Data and (z) the protection of the IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (ii), individually or in the aggregate, have a Material Adverse Effect; and (iii) the Company and its subsidiaries have taken commercially reasonable steps to protect the IT Systems and Data, including by implementing backup, security and disaster recovery plans, procedures and technology consistent with industry standards and practices.

(oo) Compliance with Data Privacy Laws. The Company and its subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act ("**HIPAA**") (collectively, the "**Privacy Laws**") except as would not individually or in the aggregate, have a Material Adverse Effect. To ensure compliance with the Privacy Laws, the Company and its subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its

subsidiaries have at all times made all disclosures to users or customers required by applicable Privacy Laws, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable Privacy Laws except as would not, in the case of this clause (ii), individually or in the aggregate, have a Material Adverse Effect in any material respect. The Company further certifies that neither it nor any subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(pp) Compliance with Health Care Laws. Except to the extent any noncompliance would have a Material Adverse Effect, the Company and its subsidiaries are, and at all times have been, in compliance with all Health Care Laws. For purposes of this Agreement, "**Health Care Laws**" means: (i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), the Public Health Service Act (42 U.S.C. Section 201 et seq.), and the regulations promulgated thereunder; (ii) all applicable federal, state, local and foreign health care fraud and abuse laws, including, without limitation, the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal false statements law (42 U.S.C. Section 1320a-7b(a)), 18 U.S.C. Sections 286 and 287, the health care fraud criminal provisions under HIPAA (42 U.S.C. Section 1320d et seq.), the Stark Law (42 U.S.C. Section 1395nn), the civil monetary penalties law (42 U.S.C. Section 1320a-7a), the exclusion law (42 U.S.C. Section 1320a-7), the Physician Payments Sunshine Act (42 U.S.C. Section 1320-7h), and applicable laws governing government funded or sponsored healthcare programs; (iii) HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. Section 17921 et seq.); (iv) the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010; (v) licensure, quality, safety and accreditation requirements under applicable federal, state, local or foreign laws or regulatory bodies; and (vi) all other applicable local, state, federal, national, supranational and foreign laws, relating to the regulation of the Company or its subsidiaries, and (vii) the directives and regulations promulgated pursuant to such statutes and any state or non-U.S. counterpart thereof. Neither the Company nor any of its subsidiaries has received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any court or arbitrator or governmental or regulatory authority or third party alleging that any product operation or activity is in violation of any Health Care Laws nor, to the Company's knowledge, is any such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action threatened. The Company and its subsidiaries have filed, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Health Care Laws, and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and accurate on the date filed in all material respects (or were corrected or supplemented by a subsequent submission). Neither the Company nor any of its subsidiaries is a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any governmental or regulatory authority. Additionally, neither the Company, any of its subsidiaries nor any of their respective employees, officers, directors, or agents has been excluded, suspended or debarred from participation in any U.S. federal health care program or human clinical research or, to the knowledge of the Company, is subject to a governmental inquiry, investigation, proceeding, or other similar action that could reasonably be expected to result in debarment, suspension, or exclusion.

(qq) Other Underwriting Agreements. The Company is not a party to any agreement with an agent or underwriter for any other "at the market" or continuous equity transaction.

Any certificate signed by any officer or representative of the Company or any of its subsidiaries and delivered to the Agent or counsel for the Agent in connection with an issuance of Shares shall be deemed a representation and warranty by the Company to the Agent as to the matters covered thereby on the date of such certificate.

The Company acknowledges that the Agent and, for purposes of the opinions to be delivered pursuant to Section 4(o) hereof, counsel to the Company and counsel to the Agent, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

Section 3. ISSUANCE AND SALE OF COMMON SHARES

(a) Sale of Securities. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company and the Agent agree that the Company may from time to time seek to sell Shares through the Agent, acting as sales agent, or directly to the Agent, acting as principal, as follows, with an aggregate Sales Price of up to the Maximum Program Amount, based on and in accordance with Issuance Notices as the Company may deliver, during the Agency Period.

(b) Mechanics of Issuances.

(i) Issuance Notice. Upon the terms and subject to the conditions set forth herein, on any Trading Day during the Agency Period on which the conditions set forth in Section 5(a) and Section 5(b) shall have been satisfied, the Company may exercise its right to request an issuance of Shares by delivering to the Agent an Issuance Notice; *provided, however*, that (A) in no event may the Company deliver an Issuance Notice to the extent that (I) the sum of (x) the aggregate Sales Price of the requested Issuance Amount, plus (y) the aggregate Sales Price of all Shares issued under all previous Issuance Notices effected pursuant to this Agreement, would exceed the Maximum Program Amount; and (B) prior to delivery of any Issuance Notice, the period set forth for any previous Issuance Notice shall have expired or been terminated. An Issuance Notice shall be considered delivered on the Trading Day that it is received by e-mail to the persons set forth in Schedule A hereto and confirmed by the Company by telephone (including a voicemail message to the persons so identified), with the understanding that, with adequate prior written notice, the Agent may modify the list of such persons from time to time.

(ii) Agent Efforts. Upon the terms and subject to the conditions set forth in this Agreement, upon the receipt of an Issuance Notice, the Agent will use its commercially reasonable efforts consistent with its normal sales and trading practices to place the Shares with respect to which the Agent has agreed to act as sales agent, subject to, and in accordance with the information specified in, the Issuance Notice, unless the sale of the Shares described therein has been suspended, cancelled or otherwise terminated in accordance with the terms of this Agreement. For the avoidance of doubt, the parties to this Agreement may modify an Issuance Notice at any time provided they both agree in writing to any such modification.

(iii) Method of Offer and Sale. The Shares may be offered and sold (A) in privately negotiated transactions with the consent of the Company; (B) as block transactions; or (C) by any other method permitted by law deemed to be an "at the market offering" as defined in Rule 415(a)(4) under the Securities Act, including sales made directly on the Principal Market or sales made into any other existing trading market of the Common Shares. Nothing in this Agreement

shall be deemed to require either party to agree to the method of offer and sale specified in the preceding sentence, and (except as specified in clauses (A) and (B) above) the method of placement of any Shares by the Agent shall be at the Agent's discretion.

(iv) Confirmation to the Company. If acting as sales agent hereunder, the Agent will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which it has placed Shares hereunder setting forth the number of shares sold on such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof.

(v) Settlement. Each issuance of Shares will be settled on the applicable Settlement Date for such issuance of Shares and, subject to the provisions of Section 5, on or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Shares being sold by crediting the Agent or its designee's account at The Depository Trust Company through its Deposit/Withdrawal At Custodian (DWAC) System, or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Shares, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, the Agent will deliver, by wire transfer of immediately available funds, the related Issuance Price in same day funds delivered to an account designated by the Company prior to the Settlement Date. The Company may sell Shares to the Agent as principal at a price agreed upon at each relevant time Shares are sold pursuant to this Agreement (each, a "**Time of Sale**").

(vi) Suspension or Termination of Sales. Consistent with standard market settlement practices, the Company or the Agent may, upon notice to the other party hereto in writing or by telephone (confirmed immediately by verifiable email), suspend any sale of Shares, and the period set forth in an Issuance Notice shall immediately terminate; *provided, however*, that (A) such suspension and termination shall not affect or impair either party's obligations with respect to any Shares placed or sold hereunder prior to the receipt of such notice; (B) if the Company suspends or terminates any sale of Shares after the Agent confirms such sale to the Company, the Company shall still be obligated to comply with Section 3(b)(v) with respect to such Shares; and (C) if the Company defaults in its obligation to deliver Shares on a Settlement Date, the Company agrees that it will hold the Agent harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company. The parties hereto acknowledge and agree that, in performing its obligations under this Agreement, the Agent may borrow Common Shares from stock lenders in the event that the Company has not delivered Shares to settle sales as required by subsection (v) above, and may use the Shares to settle or close out such borrowings. The Company agrees that no such notice shall be effective against the Agent unless it is made to the persons identified in writing by the Agent pursuant to Section 3(b)(i).

(vii) No Guarantee of Placement, Etc. The Company acknowledges and agrees that (A) there can be no assurance that the Agent will be successful in placing Shares; (B) the Agent will incur no liability or obligation to the Company or any other Person if it does not sell Shares; and (C) the Agent shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement, except as otherwise specifically agreed by the Agent and the Company.

(viii) Material Non-Public Information. Notwithstanding any other provision of this Agreement, the Company and the Agent agree that the Company shall not deliver any Issuance Notice to the Agent, and the Agent shall not be obligated to place any Shares, during any period in which the Company is in possession of material non-public information.

(c) Fees. As compensation for services rendered, the Company shall pay to the Agent, on the applicable Settlement Date, the Selling Commission for the applicable Issuance Amount (including with respect to any suspended or terminated sale pursuant to Section 3(b)(vi)) by the Agent deducting the Selling Commission from the applicable Issuance Amount.

(d) Expenses. The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Shares (including all printing and engraving costs); (ii) all fees and expenses of the registrar and transfer agent of the Shares; (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Shares; (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors; (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), the Prospectus, any Free Writing Prospectus (as defined below) prepared by or on behalf of, used by, or referred to by the Company, and all amendments and supplements thereto, and this Agreement; (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Agent in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Shares for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Agent, preparing and printing a "**Blue Sky Survey**" or memorandum and a "**Canadian Wrapper"**, and any supplements thereto, advising the Agent of such qualifications, registrations, determinations and exemptions; (vii) the reasonable fees and disbursements of the Agent's counsel, including the reasonable fees and expenses of counsel for the Agent in connection with, FINRA review, if any, and approval of the Agent's participation in the offering and distribution of the Shares; (viii) the filing fees incident to FINRA review, if any; (ix) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives, employees and officers of the Company and of the Agent and any such consultants, and the cost of any aircraft chartered in connection with the road show; and (x) the fees and expenses associated with listing the Shares on the Principal Market. The fees and disbursements of Agent's counsel pursuant to subsections (vi) and (vii) above shall not exceed (A) $75,000 in connection with the filing of the Prospectus which is due upon execution of this Agreement and (B) $15,000 in connection with each Triggering Event Date (as defined below) on which the Company is required to provide a certificate pursuant to Section 4(o).

Section 4. ADDITIONAL COVENANTS

The Company covenants and agrees with the Agent as follows, in addition to any other covenants and agreements made elsewhere in this Agreement:

(a) Exchange Act Compliance. During the Agency Period, the Company shall (i) file, on a timely basis, with the Commission all reports and documents required to be filed under Section 13, 14 or 15 of the Exchange Act in the manner and within the time periods required by the Exchange Act; and (ii) either (A) include in its quarterly reports on Form 10-Q and its annual reports on Form 10-K, a summary detailing, for the relevant reporting period, (1) the number of Shares sold through the Agent pursuant to this Agreement and (2) the net proceeds received by the Company from such sales or (B) prepare a prospectus supplement containing, or include in

such other filing permitted by the Securities Act or Exchange Act (each an "**Interim Prospectus Supplement")**, such summary information and, at least once a quarter and subject to this Section 4, file such Interim Prospectus Supplement pursuant to Rule 424(b) under the Securities Act (and within the time periods required by Rule 424(b) and Rule 430B under the Securities Act)).

(b) Securities Act Compliance. After the date of this Agreement, the Company shall promptly advise the Agent in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission; (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus, any Free Writing Prospectus; (iii) of the time and date that any post-effective amendment to the Registration Statement or any Rule 462(b) Registration Statement becomes effective; and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus or of any order preventing or suspending the use of any Free Writing Prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Shares from any securities exchange upon which they are listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its best efforts to obtain the lifting of such order as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rule 424(b) and Rule 433, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) or Rule 433 were received in a timely manner by the Commission.

(c) Amendments and Supplements to the Prospectus and Other Securities Act Matters. If any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus so that the Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if in the opinion of the Agent or counsel for the Agent it is otherwise necessary to amend or supplement the Prospectus to comply with applicable law, including the Securities Act, the Company agrees (subject to Section 4(d) and 4(f)) to promptly prepare, file with the Commission and furnish at its own expense to the Agent, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law including the Securities Act (it being acknowledged that the Company may delay the filing of any amendment or supplement, if, in the judgement of the Company, it is in the best interest of the Company). Neither the Agent's consent to, or delivery of, any such amendment or supplement shall constitute a waiver of any of the Company's obligations under Sections 4(d) and 4(f).

(d) Agent's Review of Proposed Amendments and Supplements. Prior to amending or supplementing the Registration Statement (including any registration statement filed under Rule 462(b) under the Securities Act) or the Prospectus (excluding any amendment or supplement through incorporation of any report filed under the Exchange Act), other than any amendment or supplement that does not relate the sale of the Common Shares under this Agreement, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each such proposed amendment or supplement, and the Company shall not file or use any such proposed amendment or supplement

without the Agent's prior consent, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(e) Use of Free Writing Prospectus. Neither the Company nor the Agent has prepared, used, referred to or distributed, or will prepare, use, refer to or distribute, without the other party's prior written consent, any "written communication" that constitutes a "free writing prospectus" as such terms are defined in Rule 405 under the Securities Act with respect to the offering contemplated by this Agreement (any such free writing prospectus being referred to herein as a "**Free Writing Prospectus**").

(f) Free Writing Prospectuses. The Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed free writing prospectus or any amendment or supplement thereto to be prepared by or on behalf of, used by, or referred to by the Company and the Company shall not file, use or refer to any proposed free writing prospectus or any amendment or supplement thereto without the Agent's consent, which shall not be unreasonably withheld, conditioned or delayed. The Company shall furnish to the Agent, without charge, as many copies of any free writing prospectus prepared by or on behalf of, or used by the Company, as the Agent may reasonably request. If at any time when a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares (but in any event if at any time through and including the date of this Agreement) there occurred or occurs an event or development as a result of which any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company shall promptly amend or supplement such free writing prospectus to eliminate or correct such conflict or so that the statements in such free writing prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such subsequent time, not misleading, as the case may be; *provided, however*, that prior to amending or supplementing any such free writing prospectus, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented free writing prospectus and the Company shall not file, use or refer to any such amended or supplemented free writing prospectus without the Agent's consent, which shall not be unreasonably withheld, conditioned or delayed.

(g) Filing of Agent Free Writing Prospectuses. The Company shall not to take any action that would result in the Agent or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Agent that the Agent otherwise would not have been required to file thereunder.

(h) Copies of Registration Statement and Prospectus. After the date of this Agreement through the last time that a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares, the Company agrees to furnish the Agent with copies (which may be electronic copies) of the Registration Statement and each amendment thereto, and with copies of the Prospectus and each amendment or supplement thereto in the form in which it is filed with the Commission pursuant to the Securities Act or Rule 424(b) under the Securities Act, both in such quantities as the Agent may reasonably request from time to time; and, if the delivery of a prospectus is

required under the Securities Act or under the blue sky or securities laws of any jurisdiction at any time on or prior to the applicable Settlement Date for any period set forth in an Issuance Notice in connection with the offering or sale of the Shares and if at such time any event has occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it is necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Agent and to request that the Agent suspend offers to sell Shares (and, if so notified, the Agent shall cease such offers as soon as practicable); and if the Company decides to amend or supplement the Registration Statement or the Prospectus as then amended or supplemented, to advise the Agent promptly by telephone (with confirmation in writing) and to prepare and cause to be filed promptly with the Commission an amendment or supplement to the Registration Statement or the Prospectus as then amended or supplemented that will correct such statement or omission or effect such compliance (it being acknowledged that the Company may delay the filing of any amendment or supplement, if, in the judgement of the Company, it is in the best interest of the Company); provided, however, that if during such same period the Agent is required to deliver a prospectus in respect of transactions in the Shares, the Company shall promptly prepare and file with the Commission such an amendment or supplement.

(i) Blue Sky Compliance. The Company shall cooperate with the Agent and counsel for the Agent to qualify or register the Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws or Canadian provincial securities laws of those jurisdictions designated by the Agent, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Shares. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Agent promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof as soon as practicable.

(j) Earnings Statement. As soon as practicable, the Company will make generally available to its security holders and to the Agent an earnings statement (which need not be audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act, which requirement may be satisfied by publicly filing the required information on EDGAR.

(k) Listing; Reservation of Shares. (a) The Company will maintain the listing of the Shares on the Principal Market; and (b) the Company will reserve and keep available at all times, free of preemptive rights, Shares for the purpose of enabling the Company to satisfy its obligations under this Agreement.

(l) Transfer Agent. The Company shall engage and maintain, at its expense, a registrar and transfer agent for the Shares.

(m) Due Diligence. During the term of this Agreement, the Company will reasonably cooperate with any reasonable due diligence review conducted by the Agent in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during normal business hours and at the Company's principal offices, as the Agent may reasonably request from time to time.

(n) Representations and Warranties. The Company acknowledges that each delivery of an Issuance Notice and each delivery of Shares on a Settlement Date shall be deemed to be (i) an affirmation to the Agent that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such Issuance Notice or of such Settlement Date, as the case may be, as though made at and as of each such date, except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto); and (ii) an undertaking that the Company will advise the Agent if any of such representations and warranties will not be true and correct as of the Settlement Date for the Shares relating to such Issuance Notice, as though made at and as of each such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares).

(o) Deliverables at Triggering Event Dates; Certificates. The Company agrees that on or prior to the date of the first Issuance Notice and, during the term of this Agreement after the date of the first Issuance Notice, upon:

(A) the filing of the Prospectus or the amendment or supplement of any Registration Statement or Prospectus (other than a prospectus supplement relating solely to an offering of securities other than the Shares or a prospectus filed pursuant to Section 4(a)(ii)(B)), by means of a post-effective amendment, sticker or supplement, but not by means of incorporation of documents by reference into the Registration Statement or Prospectus;

(B) the filing with the Commission of an annual report on Form 10-K or a quarterly report on Form 10-Q (including any Form 10-K/A or Form 10-Q/A containing amended financial information or a material amendment to the previously filed annual report on Form 10-K or quarterly report on Form 10-Q), in each case, of the Company; or

(C) the filing with the Commission of a current report on Form 8-K of the Company containing amended financial information (other than information "furnished" pursuant to Item 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) that is material to the offering of securities of the Company in the Agent's reasonable discretion;

(any such event, a "**Triggering Event Date**"), the Company shall furnish the Agent (but in the case of clause (C) above only if the Agent reasonably determines that the information contained in such current report on Form 8-K of the Company is material) with a certificate as of the Triggering Event Date, in the form and substance satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented, (A) confirming that the representations and warranties of the Company contained in this Agreement are true and correct, (B) that the Company has performed all of its obligations hereunder to be performed on or prior to the date of such certificate and as to the matters set forth in Section 5(a)(iii) hereof, and (C) containing any other certification that the Agent shall reasonably request. The requirement to provide a certificate under this Section 4(o) shall be

waived for any Triggering Event Date occurring at a time when no Issuance Notice is pending or a suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Shares hereunder (which for such calendar quarter shall be considered a Triggering Event Date) and the next occurring Triggering Event Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Triggering Event Date when a suspension was in effect and did not provide the Agent with a certificate under this Section 4(o), then before the Company delivers the instructions for the sale of Shares or the Agent sells any Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 4(o) dated as of the date that the instructions for the sale of Shares are issued.

(p) Legal Opinions. On or prior to the date of the first Issuance Notice and on each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable and excluding the date of this Agreement, a negative assurances letter and the written legal opinion of Goodwin Procter LLP, counsel to the Company and Xeris Pharmaceuticals, A&L Goodbody LLP, counsel to Strongbridge, Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Agent, and Sterne, Kessler, Goldstein & Fox PLLC, intellectual property counsel to the Company and Strongbridge, or other counsel reasonably acceptable to the Agent, each dated the date of delivery, in form and substance reasonably satisfactory to Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented. In lieu of such opinions for subsequent periodic filings, in the discretion of the Agent, the Company may furnish a reliance letter from such counsel to the Agent, permitting the Agent to rely on a previously delivered opinion letter, modified as appropriate for any passage of time or Triggering Event Date (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of such Triggering Event Date).

(q) Comfort Letter. On or prior to the date of the first Issuance Notice and on each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause each of KPMG LLP, the Company's current independent registered public accounting firm who has audited the financial statements of the Company included or incorporated by reference in the Registration Statement, and Ernst & Young LLP, the current independent registered public accounting firm who has audited the financial statements of Strongbridge included or incorporated by reference in the Registration Statement, to furnish the Agent a comfort letter, dated the date of delivery, in form and substance reasonably satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel; provided, however, that any such comfort letter will only be required on the Triggering Event Date specified to the extent that it contains financial statements filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into a Prospectus. If requested by the Agent, the Company shall also promptly cause a comfort letter to be furnished to the Agent upon the occurrence of any material transaction or event requiring the filing of a current report on Form 8-K containing material amended financial information of the Company, including the restatement of the Company's financial statements. The Company shall be required to furnish no more than one comfort letter hereunder per calendar quarter.

(r) Secretary's Certificate. On or prior to the date of the first Issuance Notice and on each Triggering Event Date, the Company shall furnish the Agent a certificate executed by the Secretary of the Company, signing in such capacity, dated the date of delivery (i) certifying that attached thereto are true and complete copies of the resolutions duly adopted by the Board of

Directors of the Company authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (including, without limitation, the issuance of the Shares pursuant to this Agreement), which authorization shall be in full force and effect on and as of the date of such certificate, (ii) certifying and attesting to the office, incumbency, due authority and specimen signatures of each Person who executed this Agreement for or on behalf of the Company, and (iii) containing any other certification that the Agent shall reasonably request.

(s) Agent's Own Account; Clients' Account. The Company consents to the Agent trading, in compliance with applicable law, in the Common Shares for the Agent's own account and for the account of its clients at the same time as sales of the Shares occur pursuant to this Agreement.

(t) Investment Limitation. The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Shares in such a manner as would require the Company or any of its subsidiaries to register as an investment company under the Investment Company Act.

(u) Market Activities. The Company will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Shares or any other reference security, whether to facilitate the sale or resale of the Shares or otherwise, and the Company will, and shall cause each of its affiliates to, comply with all applicable provisions of Regulation M. If the limitations of Rule 102 of Regulation M ("**Rule 102**") do not apply with respect to the Shares or any other reference security pursuant to any exception set forth in Section (d) of Rule 102, then promptly upon notice from the Agent (or, if later, at the time stated in the notice), the Company will, and shall cause each of its affiliates to, comply with Rule 102 as though such exception were not available but the other provisions of Rule 102 (as interpreted by the Commission) did apply. The Company shall promptly notify the Agent if it no longer meets the requirements set forth in Section (d) of Rule 102.

(v) Notice of Other Sale. Without the written consent of the Agent, the Company will not, directly or indirectly, (i) offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares or securities convertible into or exchangeable for Common Shares (other than Shares hereunder), warrants or any rights to purchase or acquire Common Shares, during the period beginning on the third Trading Day immediately prior to the date on which any Issuance Notice is delivered to the Agent hereunder and ending on the third Trading Day immediately following the Settlement Date with respect to Shares sold pursuant to such Issuance Notice; (ii) effect a reverse stock split, recapitalization, share consolidation, reclassification or similar transaction affecting the outstanding Common Shares; and (iii) enter into any other "at the market" or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares (other than the Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Shares, warrants or any rights to purchase or acquire, Common Shares prior to the termination of this Agreement; provided, however, that such restrictions will not be required in connection with the Company's (v) issuance or sale of Common Shares, options to purchase Common Shares or Common Shares issuable upon the exercise of options or other equity awards pursuant to any employee or director share option, incentive or benefit plan, share purchase or ownership plan, long-term incentive plan, dividend reinvestment plan, inducement award under the Principal Market's rules or other compensation plan of the Company or its subsidiaries, as in effect on the date of this Agreement, (w) issuance or sale of Common Shares issuable upon exchange, conversion or redemption of securities or the exercise or vesting of warrants, options or other

equity awards outstanding at the date of this Agreement, (x) issuance or sale of Common Shares or securities convertible into or exchangeable for Common Shares in connection with strategic transactions including joint ventures, manufacturing, marketing, sponsored research, collaboration, license or distribution arrangements which are not issued primarily for capital raising purposes; (y) issuance or sale of Common Shares or securities convertible into or exchangeable for Common Shares as consideration for mergers, acquisitions, other business combinations, joint ventures or strategic alliances occurring after the date of this Agreement which are not used for capital raising purposes and (z) modification of any outstanding options, warrants of any rights to purchase or acquire Common Shares; provided that, in the case of immediately preceding clauses (x) and (y), the aggregate number of Common Shares or securities convertible into or exchangeable for Common Shares issued in connection with all such acquisitions and other transactions does not exceed 10% of the aggregate number of Common Shares outstanding immediately following the offering of the Shares pursuant to this Agreement. For the avoidance of doubt, nothing herein shall be construed to restrict the Company's ability, or require the Company to provide notice to the Agent, to file a registration statement with the Commission.

Section 5. CONDITIONS TO DELIVERY OF ISSUANCE NOTICES AND TO SETTLEMENT

(a) Conditions Precedent to the Right of the Company to Deliver an Issuance Notice and the Obligation of the Agent to Sell Shares. The right of the Company to deliver an Issuance Notice hereunder is subject to the satisfaction, on the date of delivery of such Issuance Notice, and the obligation of the Agent to use its commercially reasonable efforts to place Shares during the applicable period set forth in the Issuance Notice is subject to the satisfaction, on each Trading Day during the applicable period set forth in the Issuance Notice, of each of the following conditions:

(i) Accuracy of the Company's Representations and Warranties; Performance by the Company. The Company shall have delivered the certificate required to be delivered pursuant to Section 4(o) on or before the date on which delivery of such certificate is required pursuant to Section 4(o). The Company shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to such date, including, but not limited to, the covenants contained in Section 4(m), Section 4(q) and Section 4(r).

(ii) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement.

(iii) Material Adverse Changes. Except as disclosed in the Prospectus and the Time of Sale Information, (a) in the judgment of the Agent there shall not have occurred any Material Adverse Change; and (b) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the

Company or any of its subsidiaries by any "nationally recognized statistical rating organization" as such term is defined for purposes of Section 3(a)(62) of the Exchange Act.

(iv) No Suspension of Trading in or Delisting of Common Shares; Other Events. The trading of the Common Shares (including without limitation the Shares) shall not have been suspended by the Commission, the Principal Market or FINRA and the Common Shares (including without limitation the Shares) shall have been approved for listing or quotation on and shall not have been delisted from the Nasdaq Stock Market, the New York Stock Exchange or any of their constituent markets. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Principal Market or trading in securities generally on either the Principal Market shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges by the Commission or the FINRA; (ii) a general banking moratorium shall have been declared by any of federal or New York, authorities; or (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Agent is material and adverse and makes it impracticable to market the Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of securities.

(b) Documents Required to be Delivered on each Issuance Notice Date. The Agent's obligation to use its commercially reasonable efforts to place Shares hereunder shall additionally be conditioned upon the delivery to the Agent on or before the Issuance Notice Date of a certificate in form and substance reasonably satisfactory to the Agent, executed by the Chief Executive Officer, President or Chief Financial Officer of the Company, to the effect that all conditions to the delivery of such Issuance Notice shall have been satisfied as at the date of such certificate (which certificate shall not be required if the foregoing representations shall be set forth in the Issuance Notice).

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

Section 6. INDEMNIFICATION AND CONTRIBUTION

(a) Indemnification of the Agent. The Company agrees to indemnify and hold harmless the Agent, its officers and employees, and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which the Agent or such officer, employee or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation),

insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to reimburse the Agent and each such officer, employee and controlling person for any and all expenses (including the reasonable and documented fees and disbursements of counsel chosen by the Agent) as such expenses are reasonably incurred by the Agent or such officer, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Agent expressly for use in the Registration Statement, any such Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by the Agent to the Company consists of the information described in Section 6(b) below. The indemnity agreement set forth in this Section 6(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) Indemnification of the Company, its Directors and Officers. The Agent agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which the Company or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation), arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; but, for each of (i) and (ii) above, only to the extent arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Agent expressly for use in the Registration Statement, any such Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by the Agent to the Company consists of the information set forth in the first sentence of the final paragraph under the caption “Plan of Distribution” in the Prospectus, and to reimburse the Company and each such director, officer and controlling person for any and all expenses

(including the reasonable and documented fees and disbursements of one counsel chosen by the Company) as such expenses are reasonably incurred by the Company or such officer, director or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that the Agent may otherwise have.

(c) Notifications and Other Indemnification Procedures. Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 6 or to the extent it is not materially prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and counsel to the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select one separate counsel for all indemnified parties (in addition to one local counsel in any applicable jurisdiction(s)) to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the fees and expenses of more than one separate counsel (together with local counsel), representing the indemnified parties who are parties to such action), which counsel (together with any local counsel) for the indemnified parties shall be selected by the indemnified party (in the case of counsel for the indemnified parties referred to in Section 6(a) and (b) above), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party and shall be paid as they are incurred.

(d) Settlements. The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 6(b) hereof, the indemnifying party

agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request; and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

(e) Contribution. If the indemnification provided for in this Section 6 is for any reason (other than due to indemnification not being available pursuant to its terms) held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Agent, on the other hand, from the offering of the Shares pursuant to this Agreement; or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Agent, on the other hand, in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total gross proceeds from the offering of the Shares (before deducting expenses) received by the Company bear to the total commissions received by the Agent. The relative fault of the Company, on the one hand, and the Agent, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Agent, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 6(b), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 6(b) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 6(e); *provided, however,* that no additional notice shall be required with respect to any action for which notice has been given under Section 6(b) for purposes of indemnification.

The Company and the Agent agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 6(e).

Notwithstanding the provisions of this Section 6(e), the Agent shall not be required to contribute any amount in excess of the Selling Commission received by the Agent in connection

with the offering contemplated hereby. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6(e), each officer and employee of the Agent and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Agent, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

Section 7. TERMINATION & SURVIVAL

(a) Term. Subject to the provisions of this Section 7, the term of this Agreement shall continue from the date of this Agreement until the end of the Agency Period, unless earlier terminated by the parties to this Agreement pursuant to this Section 7.

(b) Termination; Survival Following Termination.

(i) Either party may terminate this Agreement prior to the end of the Agency Period, by giving written notice as required by this Agreement, upon ten (10) Trading Days' notice to the other party; provided that, (A) if the Company terminates this Agreement after the Agent confirms to the Company any sale of Shares, the Company shall remain obligated to comply with Section 3(b)(v) with respect to such Shares and (B) Section 2, Section 6, Section 7 and Section 8 shall survive termination of this Agreement. If termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall nevertheless settle in accordance with the terms of this Agreement. Except as set forth herein, upon termination of this Agreement, the Company shall not have any liability to the Agent for any discount, commission or other compensation with respect to any Shares not otherwise sold by the Agent under this Agreement.

(ii) In addition to the survival provision of Section 7(b)(i), the respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Agent or the Company or any of its or their partners, officers or directors or any controlling person, as the case may be, and, anything herein to the contrary notwithstanding, will survive delivery of and payment for the Shares sold hereunder and any termination of this Agreement.

Section 8. MISCELLANEOUS

(a) Press Releases and Disclosure. The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the date of this Agreement, and may file with the Commission a Current Report on Form 8-K, with this Agreement attached as an exhibit thereto, describing the material terms of the transactions contemplated hereby, and the Company shall consult with the Agent prior to making such disclosures, and the parties hereto shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties hereto. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated

hereby without the prior written approval of the other party hereto, except as may be necessary or appropriate in the reasonable opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such disclosure, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties hereto.

(b) No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (i) the transactions contemplated by this Agreement, including the determination of any fees, are arm's-length commercial transactions between the Company and the Agent, (ii) when acting as a principal under this Agreement, the Agent is and has been acting solely as a principal is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (iii) the Agent has not assumed nor will assume an advisory or fiduciary responsibility in favor of the Company with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Agent has advised or is currently advising the Company on other matters) and the Agent does not have any obligation to the Company with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Agent and its respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (v) the Agent has not provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(c) Research Analyst Independence. The Company acknowledges that the Agent's research analysts and research departments are required to and should be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and as such the Agent's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company or the offering that differ from the views of their respective investment banking divisions. The Company understands that the Agent is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

(d) Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Agent:

Jefferies LLC
520 Madison Avenue
New York, NY 10022
Facsimile: (646) 619-4437
Attention: General Counsel

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

Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007

Facsimile: (212) 230-8888
Attention: Lisa Firenze

If to the Company:
Xeris Biopharma Holdings, Inc.
180 North LaSalle Street
Suite 1600
Chicago, IL 60601
Facsimile: (312) 604-5600
Attention: Legal Department

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

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Facsimile: (617) 801-8864
Attention: Joseph Theis

with a copy (which shall not constitute notice) to:
Xeris Biopharma Holdings, Inc.
180 North LaSalle Street
Suite 1600
Chicago, IL 60601
Facsimile: (312) 604-5600
Attention: Steven Pieper

Any party hereto may change the address for receipt of communications by giving written notice to the others in accordance with this Section 8(d).

(e) Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 6, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Shares as such from the Agent merely by reason of such purchase.

(f) Partial Unenforceability. The invalidity or unenforceability of any Article, Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Article, Section, paragraph or provision hereof. If any Article, Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

(g) Governing Law Provisions. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("**Related Proceedings**") may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted

in regard to the enforcement of a judgment of any such court (a "**Related Judgment**"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

(h) General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and may be delivered by facsimile transmission or by electronic delivery of a portable document format (PDF) file. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Article and Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[Signature Page Immediately Follows]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms

Very truly yours,

XERIS BIOPHARMA HOLDINGS, INC.

By: /s/ Paul R. Edick
Name: Paul R. Edick
Title: Chief Executive Officer

The foregoing Agreement is hereby confirmed and accepted by the Agent in New York, New York as of the date first above written.

JEFFERIES LLC

By: /s/ Donald Lynaugh
Name: Donald Lynaugh
Title: Managing Director

EXHIBIT A

ISSUANCE NOTICE

[Date]

Jefferies LLC
520 Madison Avenue
New York, New York 10022

Attn: [_____]

Reference is made to the Open Market Sale Agreement between Xeris Biopharma Holdings, Inc. (the "**Company**") and Jefferies LLC (the "**Agent**") dated as of May 11, 2022. The Company confirms that all conditions to the delivery of this Issuance Notice are satisfied as of the date hereof.

Date of Delivery of Issuance Notice (determined pursuant to Section 3(b)(i)): _____

Issuance Amount (equal to the total Sales Price for such Shares):

$_____

Number of days in selling period: _____

First date of selling period: _____

Last date of selling period: _____

Settlement Date(s) if other than standard T+2 settlement:

_____

Floor Price Limitation (in no event less than $1.00 without the prior written consent of the Agent, which consent may be withheld in the Agent's sole discretion): $ ____ per share

Comments: _____

_____

By: _____
Name:
Title:

Schedule A

Notice Parties

The Company

Paul R. Edick, pedick@xerispharma.com
Steven M. Pieper, SPieper@xerispharma.com
Beth P. Hecht, bhecht@xerispharma.com

The Agent

Michael Brown, mbrown7@jefferies.com
Donald Lynaugh, dlynaugh@jefferies.com

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.2 AND 5.3 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

FORM OF WARRANT TO PURCHASE COMMON STOCK

Company/Issuer:	XERIS BIOPHARMA HOLDINGS, INC., a Delaware corporation
Number of Shares:	[_____] (subject to adjustment pursuant to the terms herein)
Type/Series of Stock:	Common Stock
Exercise Price:	$2.28 per share
Issue Date:	March 8, 2022
Expiration Date:	March 8, 2029
Credit Facility:	This Warrant to Purchase Common Stock (this "**Warrant**") is issued in connection with that certain Credit Agreement and Guaranty, dated as of March 8, 2022 among Xeris Biopharma Holdings, Inc. (the "**Company**"), Xeris Pharmaceuticals, Inc., as the borrower, certain subsidiaries of the Company, the lenders from time to time party thereto, and Hayfin Services LLP as administrative agent for such lenders.

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, [***Name of Hayfin Entity***] (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, the "**Holder**") is entitled to purchase the number of fully paid and non-assessable shares (the "**Shares**") of the above-stated Type/Series of Stock (the "**Class**") of the Company at the above-stated Exercise Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company a copy of this Warrant as then in effect, together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Exercise Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Exercise Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to pay all or a portion of the aggregate Exercise Price by instructing the Company to withhold a number of Shares then issuable upon exercise of this Warrant with an aggregate fair market value (as determined pursuant to Section 1.3 below) equal to such aggregate Exercise Price (or portion thereof if applicable). Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

$$X = Y(A-B)/A$$

where:

X = the number of Shares to be issued to the Holder;

Y = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares to be withheld by the Company in

payment of the aggregate Exercise Price or a portion thereof if applicable);

A = the fair market value (as determined pursuant to Section 1.3 below) of one Share; and

B = the Exercise Price per Share.

For purposes of calculating the fair market value of withheld Shares in the event of any withholding of Shares pursuant to this Section 1.2 where the number of such Shares whose value is equal to the aggregate Exercise Price (or portion thereof, if applicable) is not a whole number, the number of such Shares withheld by the Company shall be rounded up to the nearest whole Share.

1.3 Fair Market Value. If the Company's common stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "**Trading Market**") and the Class is common stock, the fair market value of a Share shall be the closing price or last sale price of a share of common stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company's common stock is not traded in a Trading Market, the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment, such determination to be subject to Section 2.5(a) or Section 2.5(b), as applicable.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of a customary "lost share" certificate and indemnity, reasonably satisfactory in form and substance to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, promptly, but in any event with five (5) Business Days, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, "**Acquisition**" means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company and its Subsidiaries (taken as a whole); (ii) any merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company's domicile), or any other corporate consolidation or reorganization, in each case in which the stockholders of the Company immediately prior to such merger, consolidation or reorganization beneficially own capital stock representing less than a majority of the Company's (or the surviving or successor entity's) outstanding voting power immediately after such merger, consolidation or reorganization (or, if such Company stockholders beneficially own a majority of the outstanding voting power of the surviving or successor entity as of immediately after such merger, consolidation or reorganization, such surviving or successor entity is not the Company); or (iii) any sale or other transfer (or related series of sales or transfers) by the stockholders of the Company of shares which in the aggregate represent at least a majority of the Company's then-total outstanding combined voting power.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition as to which both (x) the acquiring Person or Persons are not affiliates of the Company and (y) the consideration to be received by the Company's stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a "**Cash/Public Acquisition**"), unless (i) Holder has expressly notified the Company that Holder has elected not to exercise this Warrant, (ii) Holder has expressly notified the Company that it is electing to exercise this Warrant pursuant to Section 1.1 or

(iii) the fair market value of one Share (or other security issuable upon the exercise hereof) is less than the Exercise Price per share (as adjusted pursuant to the terms of this Warrant) in effect as of the Business Day immediately prior to the consummation date of such Acquisition, Holder shall be deemed to have elected to exercise this Warrant pursuant to Section 1.2 and such exercise will be deemed effective immediately prior to and contingent upon the consummation of such Acquisition. If an event of the type described in clause (i) or (iii) above occurs, this Warrant will expire immediately prior to the consummation of such Acquisition.

(c) Not less than twelve (12) Business Days prior to the projected closing date of any Acquisition (including any Cash/Public Acquisition) the Company shall provide Holder with a reasonable written summary of the proposed Acquisition (including the parties thereto, the projected consideration per Share to be paid to holders of Shares, if any, and the treatment of this Warrant in connection with such proposes Acquisition), and not less than five (5) Business Days prior to the consummation of such Acquisition the Company shall provide Holder with a written summary of any material changes to the summary previously provided to Holder and notice of the consideration per Share to be paid to holders of Shares, if any, and the treatment of this Warrant upon consummation of the Acquisition. The Company shall promptly provide Holder with reasonable additional information concerning any proposed Acquisition, to the extent reasonably requested by Holder.

(d) Upon the closing of any Acquisition other than a Cash/Public Acquisition defined above, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(e) As used in this Warrant, "**Marketable Securities**" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded on a Trading Market, and (iii) following the closing of such Acquisition, Holder would not be restricted from publicly re-selling all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six (6) months from the closing of such Acquisition.

1.7 Automatic Exercise at Expiration. To the extent this Warrant is not previously exercised in full, and if the fair market value of one Share (or other security issuable upon the exercise hereof) is greater than the per share Exercise Price (as adjusted pursuant to the terms of this Warrant) in effect on the Expiration Date, Holder shall be deemed to have elected to exercise this Warrant pursuant to Section 1.2 and such exercise will be deemed effective immediately prior to the close of business on the Expiration Date (unless the Expiration Date is not a Business Day, in which case, on the Business Day immediately preceding the Expiration Date). To the extent this Warrant is deemed automatically exercised pursuant to this Section 1.7, the Company agrees to notify the Holder within a reasonable period of time of the number of Shares the Holder is to receive by reason of such automatic exercise.

SECTION 2. ADJUSTMENTS TO THE SHARES AND EXERCISE PRICE.

1.1 Stock Dividends, Etc. If the Company declares or pays a dividend or distribution on the outstanding shares of the Class payable in Common Stock or other Securities (defined below) or other property (including cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of such Common Stock or other Securities or property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred.

1.2 Reclassification, Exchange, Combinations or Substitution. Upon the occurrence of any event that results in any change to the number of Shares Deemed Outstanding (defined below) by reason of recapitalizations, reclassifications, combinations, substitutions or exchanges of Securities, splits or reverse splits, separations, reorganization, liquidations, replacements or the like, the number and class of Shares available upon exercise of this Warrant in the aggregate and the Exercise Price per share shall be correspondingly adjusted as may be necessary in order to give Holder, upon exercise of this Warrant for the aggregate Exercise Price in effect on the date of this Warrant, the total number, class, and kind of Securities as Holder would have owned (or would have had the right to own upon exercise hereof) had this Warrant been exercised in full prior to any such event and had Holder continued to hold the Shares issued to it upon such exercise until after the occurrence of the event requiring adjustment. In furtherance of, and not in limitation of the foregoing, the Company and Holder acknowledge and agree that (i) if the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares issuable hereunder shall be proportionately increased and the Exercise Price shall be proportionately decreased, (ii) if the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Exercise Price shall be proportionately increased and the number of Shares shall be proportionately decreased, (iii) the form of this Warrant need not be changed because of any adjustment in the number of Shares subject to this Warrant, and (iv) the provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

1.3 Certificate as to Adjustment. The Company covenants and agrees that (i) as promptly as reasonably practicable following any change or adjustment of the type described above in either Section 2.1 or 2.2, but in any event not later than five (5) Business Days thereafter, the Company shall furnish to Holder a certificate of a responsible officer of the Company (having knowledge of such change or adjustment and this Warrant) setting forth in reasonable detail such change or adjustment and the facts upon which it is based and certifying the calculation thereof, and (ii) as promptly as reasonably practicable following the receipt by the Company of a written request by Holder, but in any event not later than five (5) Business Days thereafter, the Company shall furnish to Holder a certificate of such a responsible officer certifying the number of Shares or the amount, if any, of other Securities, cash or other assets then issuable upon exercise of the Warrant.

1.4 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Exercise Price.

1.5 Disputes; No Impairment, etc. The parties hereto (for themselves and their successors and permitted transferees and assigns) agree as follows:

(a) Disputes. In the event of any dispute which arises between Holder and the Company (including the Board of Directors of the Company) with respect to the calculation or determination of any adjustment to the Exercise Price, the number of Shares, cash, securities or other property issuable upon exercise of this Warrant, any determination of fair market value or the amount or type of consideration due to the Holder in connection with any Acquisition or other event, transaction or other matter described in Section 2.1 or 2.2 above or any other matter involving this Warrant or the Shares that is not resolved by the parties after good faith discussions and efforts to reach resolution, upon the request of Holder the disputed issue(s) shall be submitted to a firm of independent investment bankers or public accountants of recognized national standing, which (i) shall be chosen by the Company and be reasonably satisfactory to Holder and (ii) shall be completely independent of the Company (an "Independent Advisor"), for determination, and such determination by the Independent Advisor shall be binding upon the Company and Holder with respect to this Warrant, any Shares issued or issuable in connection herewith, the Exercise Price therefor, or any other matter in dispute, as the case may be, absent manifest error. Costs and expenses of the Independent Advisor shall be shared 50/50 by the Company and Holder.

(b) Equitable Equivalent. In case any event shall occur as to which the provisions of Section 2.5(a) above are not strictly applicable but the failure to make an adjustment would not, in the reasonable, good faith opinion of Holder, fairly protect the rights and benefits of Holder represented by this Warrant in accordance with the essential intent and principles of Sections 2.1, 2.2 and 2.5(a) above, then, in any such case, at the request of Holder, the Company shall submit the matter and issues raised by Holder to an Independent Advisor, which shall give its opinion upon the adjustment, if any, on a basis consistent with the essential intent and principles established in Sections 2.1, 2.2 and 2.5(a) above, to the extent necessary to preserve the rights and benefits represented by this Warrant. Upon receipt of such opinion, the Company will promptly mail a copy thereof to Holder and shall make the adjustments described therein, if any. Costs and expenses of the Independent Advisor shall be shared 50/50 by the Company and Holder.

(c) No Avoidance. The Company shall not, by way of amendment of any of its certificate of incorporation, by-laws or other constituent documents or instruments, or through any consolidation, merger, reorganization, transfer of assets, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance, performance or intended results of any of the terms or provisions of this Warrant, but will at all times in good faith assist in the carrying out of all such terms or provisions and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the Holder against dilution or other impairment as if Holder was a shareholder of the Company entitled to the benefit of fiduciary duties afforded to shareholders under Delaware law.

1.6 Warrant Register. The Company shall keep and properly maintain at its principal executive offices a register (the "**Warrant Register**") for the registration of this Warrant and any transfers, substitutions or replacements thereof. The Company may deem and treat the Person (defined below) in whose name this Warrant is registered on such register as the holder thereof for all purposes, and the Company shall not be affected by any notice to the contrary, except any assignment, division, combination or other transfer of this Warrant effected in accordance with the provisions hereof.

1.7 Shareholder Notices and Information. The Company shall provide Holder with copies of the same notices and other information the Company provides to all shareholders of the Company generally, contemporaneously with the giving thereof to such shareholders, provided that any such notices or other information which are available on the EDGAR system (or successor thereto) need not be provided in physical form and shall be deemed to have been contemporaneously provided pursuant to this Section 2.7.

SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.

1.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder that all Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any taxes, charges, liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available (free from preemptive rights) out of its authorized and unissued capital stock such number of shares of the Class, common stock and other securities as will be sufficient to permit the exercise in full of this Warrant and the conversion of the Shares into common stock or such other securities.

1.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of the Class or common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Class; or

(d) to liquidate, dissolve or wind up;

then, in connection with each such event, the Company shall give Holder:

(1) at least twelve (12) Business Days prior written notice of the date on which a record will be taken for such dividend, distribution, sale or subscription rights (and specifying the date on which the holders of outstanding shares of the Class will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and

(2) in the case of the matters referred to in (c) and (d) above at least twelve (12) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event).

Reference is made to Section 1.6(b) whereby this Warrant may be deemed to be exercised pursuant to Section 1.2 hereof. The Company will also promptly provide information reasonably requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

SECTION 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE HOLDER.

The Holder represents and warrants to, and agrees with, the Company as follows:

1.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a current view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

1.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

1.3 Investment Experience. Holder understands that its investment in this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

1.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

1.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment

intent and the accuracy of Holder's representations and warranties as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

SECTION 5. MISCELLANEOUS.

1.1 Term. Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, Eastern time, on the Expiration Date and shall be void thereafter.

(a) Legends, etc. Each certificate evidencing Shares (and each certificate evidencing the securities issued upon conversion of any Shares, if any) shall be imprinted with a legend in substantially the following form:

> THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT TO PURCHASE COMMON STOCK ISSUED BY XERIS BIOPHARMA HOLDINGS, INC. TO [***NAME OF HAYFIN ENTITY***] DATED MARCH 8, 2022 MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO XERIS BIOPHARMA HOLDINGS, INC., SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

(b) The Company covenants and agrees for the benefit of Holder and each of its successors and permitted transferees and assigns that certificates evidencing Shares issuable or deliverable upon exercise or otherwise in connection with this Warrant shall not bear or be subject to any legend restricting the transfer of such Shares as applicable (including the legend required above in clause (a) above) in any of the following circumstances: (i) following any sale of such Shares issued or delivered to the Holder under or in connection herewith pursuant to Rule 144 promulgated under the Securities Act of 1933, as amended (including judicial interpretations and pronouncements issued by the staff of the Securities and Exchange Commission or any successor agency (the "**SEC**")) ("**Rule 144**"), or (ii) if such legend is not required under applicable requirements of the Securities Act of 1933, as amended (including judicial interpretations and pronouncements issued by the staff of the SEC), including clause (b)(1) of Rule 144, or any applicable state or foreign securities laws; (collectively, the "**Unrestricted Conditions**"). The Shares issuable or deliverable upon exercise or otherwise in connection with this Warrant shall be issued free of all legends if the Unrestricted Conditions are met at the time of issuance.

(c) With a view to making available to Holder the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a holder to sell securities of the Company to the public without registration or pursuant to a registration statement otherwise required by applicable federal or state securities laws, the Company shall: (i) use reasonable commercial efforts to make and keep adequate public information available, as required by clause (c) of Rule 144; (ii) use reasonable commercial efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act of 1933 and the Securities Exchange Act of 1934, in each case as amended and including judicial interpretations and pronouncements issued by the staff of the SEC); and (iii) furnish, or otherwise make available to Holder so long as the Holder holds this Warrant, promptly upon request, a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and the Securities Exchange Act of 1934.

1.2 Compliance with Securities Laws on Transfer. This Warrant and the Shares issued upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of

the Shares, if any) may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate or related fund of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

1.3 Transfer Procedure. Holder may transfer or otherwise assign all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any other transferee; provided that, in connection with any such transfer or assignment Holder will give the Company notice of the portion of the Warrant being transferred or assigned with the name, address and taxpayer identification number (or jurisdictional equivalent) of the transferee or assignee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) or assign(s) (and Holder if applicable).

1.4 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by electronic mail or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.4. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

[***NAME OF HAYFIN ENTITY***]
c/o Hayfin Services LLP
One Eagle Place, London, SW1Y 6AF
Email: Andrew.Merrill@hayfin.com
Michael.Tischler@hayfin.com
gc@hayfin.com
Attention: Nicola O'Regan, Andrew Merrill, Michael Tischler, Legal Team / Loan Operations

With a copy to:

MORRISON &FOERSTER LLP
250 West 55th Street
New York, NY 10019
Attn: Mark S. Wojciechowski
Email: MWojciechowski@mofo.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

XERIS BIOPHARMA HOLDINGS, INC.
180 North LaSalle Street, Suite 1600
Chicago, IL 60601
Attn: Chief Financial Officer
Attn: Legal Department

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

GOODWIN PROCTER LLP
100 Northern Ave.
Boston, MA 02210

Attn: Joseph C. Theis, Jr.
Fax: (617) 801-8864
Email: jtheis@goodwinlaw.com

and

GOODWIN PROCTER LLP
100 Northern Ave.
Boston, MA 02210
Attn: Stephanie Richards
Fax: (617) 321-4374
Email: srichards@goodwinlaw.com

1.5 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

1.6 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

1.7 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

1.8 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its principles regarding conflicts of law.

1.9 Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

1.10 No Voting Rights, etc. Holder, in its capacity as a holder of this Warrant, acknowledges and agrees that it shall have no voting rights until the exercise of this Warrant. The Company acknowledges and agrees that nothing contained in this Warrant shall be construed as imposing any liabilities on Holder as a shareholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

1.11 Certain Defined Terms. The following terms used in this Warrant shall have the following meanings:

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which commercial banks in New York, NY, London, England or Luxembourg are closed.

"**Common Stock**" means the Company's common stock, $0.0001 par value per share, having ordinary voting rights, as provided in the Company's certificate of incorporation as in effect on the Issue Date.

"**Convertible Securities**" means any Securities that, directly or indirectly, are convertible into or exchangeable for Common Stock.

"**Options**" means any warrants, options or similar rights to subscribe for or purchase Securities of the Company, including its Common Stock or Convertible Securities.

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

"**Securities**" 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 currently outstanding or to be issued in the future, and in each case, however classified or designated and whether voting or non-voting.

"**Shares Deemed Outstanding**" means, at any given time, the sum (without duplication)of (i) the number of shares of Common Stock actually outstanding at such time, plus (ii) the number of shares of Common Stock issuable upon exercise of Options actually outstanding at such time, plus (iii) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as actually outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time; provided that Shares Deemed Outstanding at any given time shall not include shares of Common Stock owned or held by or for the account of the Company or any or its wholly owned subsidiaries.

[Remainder of page left blank intentionally]

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Common Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

COMPANY
HOLDER
XERIS BIOPHARMA HOLDINGS, INC.

By:____

Name:____

Title:____

[***NAME OF HAYFIN ENTITY***]

By:____

Name:____

Title:____

APPENDIX 1

NOTICE OF EXERCISE

To: XERIS BIOPHARMA HOLDINGS, INC.
180 North LaSalle Street, Suite 1600
Chicago, IL 60601
Attn: [_____]

Reference is made to that certain Warrant to Purchase Common Stock, having an issue date of March 8, 2022 (the "**Warrant**"), issued by XERIS BIOPHARMA HOLDINGS, INC. (the "**Company**") to [NAME OF HOLDER] (the "**Holder**"). Unless otherwise defined herein, capitalized terms used herein have the meanings ascribed thereto in the Warrant. A copy of the Warrant is attached to this Notice of Exercise.

The undersigned, as holder of a right to purchase Shares of the Company pursuant to the terms of the Warrant, hereby irrevocably elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder, [_____ (_____)] Shares of the Company and herewith makes payment with respect to this Notice of Exercise of [_____ Dollars ($_____)] therefor by the following method.

(Check all that apply):

- The undersigned hereby elects to make payment of the aggregate Exercise Price of [_____ Dollars ($_____)] for [(_____)] shares of the Company's Common Stock using the method described in Section 1.1 of the Warrant.
- The undersigned hereby elects to make payment of the aggregate Exercise Price of [_____ Dollars ($_____)] for [(_____)] shares of the Company's Common Stock using the method described in Section 1.2 of the Warrant.
- The undersigned hereby elects to make payment of the aggregate Exercise Price of [_____ Dollars ($_____)] for [(_____)] shares of the Company's Common Stock using a combination of the methods described in Sections 1.1 and 1.2 of the Warrant as follows: [Describe breakdown between cash exercise and cashless exercise].

DATED: _____

[NAME OF HOLDER]

By _____
Name:
Title:

APPENDIX 2

ASSIGNMENT

[DATE OF ASSIGNMENT]

Reference is made to that certain Warrant to Purchase Common Stock, having an issue date of March 8, 2022 (the "**Warrant**"), issued by XERIS BIOPHARMA HOLDINGS, INC. (the "**Company**") to [NAME OF HOLDER] (the "**Holder**"). Unless otherwise defined herein, capitalized terms used herein have the meanings ascribed thereto in the Warrant. A copy of the Warrant is attached to this Assignment.

The undersigned, [NAME OF HOLDER], is the holder of the Warrant and is entitled to purchase up to [___] Shares (subject to adjustment pursuant to the terms of the Warrant) pursuant to the terms thereof.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to [NAME OF ASSIGNEE] (the "**Assignee**") the right to acquire [all Shares entitled to be purchased upon exercise of the Warrant] [_____ of the Shares entitled to be purchased upon exercise of the Warrant] (the "**Assignment**"). In furtherance of the foregoing Assignment, the undersigned hereby irrevocably instructs the Company to (i) memorialize such Assignment in Warrant Register of the Company, and (ii) pursuant to Section 5.3 of the Warrant, execute and deliver to the Assignee [and the undersigned][a new Warrant][new Warrants] reflecting the foregoing Assignment ([each] a "**Substitute Warrant**"). The Assignee acknowledges and agrees that its Substitute Warrant and the Shares to be issued upon exercise thereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of its Substitute Warrant or any Shares to be issued upon exercise or conversion thereof except under circumstances which will not result in a violation of any applicable federal or state securities laws. The Assignee represents and warrants for the benefit of the Company that the Assignee is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.

To the extent required pursuant the Warrant, the Assignee acknowledges and agrees that a restrictive legend may be applied to the Assignee's Substitute Warrant and the Shares issuable upon exercise of such warrant substantially consistent with the legend required pursuant to Section 5.1(a) of the Warrant.

IN WITNESS WHEREOF, the parties hereto agree as set forth above as of the date first written above.

[NAME OF ASSIGNING HOLDER]

By _____
Name:
Title:

Accepted and agreed:

[NAME OF ASSIGNEE]

By _____
Name:
Title:

XERIS BIOPHARMA HOLDINGS, INC.

By _____

Name:
Title:

1" = "1" "EAST\185409488.2" "" EAST\185409488.2
ny-2336908

ny-2336908

Exhibit 5.1

May 11, 2022

Xeris Biopharma Holdings, Inc.
180 N. LaSalle Street, Suite 1600
Chicago, IL 60601

Re: Securities Registered under Registration Statement on Form S-3

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-3 (File No. 333-262404) (as amended or supplemented, the "Registration Statement") filed on January 28, 2022 with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the offering by Xeris Biopharma Holdings, Inc., a Delaware corporation (the "Company") of up to $250,000,000 of any combination of securities of the types specified therein. The Registration Statement was declared effective by the Commission on February 7, 2022. Reference is made to our opinion letter dated January 28, 2022 and included as Exhibit 5.1 to the Registration Statement. We are delivering this supplemental opinion letter in connection with the prospectus supplement (the "Prospectus Supplement") filed on May 11, 2022 by the Company with the Commission pursuant to Rule 424 under the Securities Act. The Prospectus Supplement relates to the offering by the Company of up to $75,000,000 in shares (the "Shares") of the Company's common stock, par value $0.0001 per share ("Common Stock") covered by the Registration Statement. The Shares are being offered and sold by the sales agent named in, and pursuant to, a sales agreement among the Company and such sales agent.

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinion set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

For purposes of the opinion set forth below, we have assumed that the Shares are issued for a price per share equal to or greater than the minimum price authorized by the Company's board of directors prior to the date hereof (the "Minimum Price") and that no event occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the number of then unissued Shares that may be issued for the Minimum Price.

For purposes of the opinion set forth below, we refer to the following as "Future Approval and Issuance": (a) the approval by the Company's board of directors (or a duly authorized committee of the board of directors) of the issuance of the Shares (the "Approval") and (b) the issuance of the Shares in accordance with the Approval and the receipt by the Company of the consideration (which shall not be less than the par value of such Shares) to be paid in accordance with the Approval.

The opinion set forth below is limited to the Delaware General Corporation Law.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, upon Future Approval and Issuance, will be validly issued, fully paid and nonassessable.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Quarterly report on Form10-Q relating to the Shares (the "Quarterly Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion letter as an exhibit to the Quarterly Report and its incorporation by reference and the reference to our firm in that report. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ GOODWIN PROCTER LLP

GOODWIN PROCTER LLP

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement ("Agreement") is made by and among Xeris Biopharma Holdings, Inc., a Delaware corporation (the "Parent"), Xeris Pharmaceuticals, Inc., a Delaware corporation and wholly-owned subsidiary of the Parent (the "Company"), and Beth P. Hecht (the "Executive") and is effective as of the closing date of the transactions contemplated by the Transaction Agreement by and among Strongbridge Biopharma plc, the Company and the other parties set forth therein dated May 24, 2021 (the "Effective Date").

WHEREAS, the parties intend to replace any prior agreement(s) between the Executive and the Company, the Parent or any predecessors, successors or assigns relating to the terms and conditions of the Executive's employment and the ending of the Executive's employment with this Agreement, effective as of the Effective Date, except that any agreement the Executive entered into with respect to confidentiality, intellectual property/assignment of inventions, nonsolicitation and/or noncompetition (collectively, "Restrictive Covenants") shall remain in full force and effect unless otherwise specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Term. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with the provisions hereof (the "Term"). The Company shall employ the Executive, and the Executive's employment with the Company will continue to be "at will," meaning that the Executive's employment may be terminated by the Company or the Executive at any time and for any reason subject to the terms of this Agreement.

(b) Position and Duties. The Executive shall serve as the Senior Vice President, General Counsel and Corporate Secretary of the Parent and shall have such powers and duties as may from time to time be prescribed either by the Board of Directors of the Parent (the "Board"), the Chief Executive Officer of the Parent or other authorized executive. The Executive shall devote the Executive's full working time and efforts to the business and affairs of the Company. Notwithstanding the foregoing, the Executive may serve on other boards of directors, with the prior written approval of the Board, or engage in religious, charitable or other community activities as long as such services and activities do not interfere with the Executive's performance of the Executive's duties as provided in this Agreement.

2. Compensation and Related Matters.

(a) Base Salary. The Executive's initial annual base salary shall be $419,160. The Executive's base salary may be reviewed and adjusted by the Board or the Compensation Committee of the Board (the "Compensation Committee"). The base salary in effect at any given time is referred to herein as "Base Salary." The Base Salary shall be payable in a manner that is consistent with the Company's usual payroll practices for executive officers.

(b) Incentive Compensation. The Executive shall be eligible to receive cash incentive compensation as determined by the Board or the Compensation Committee from time to time. The Executive's initial target annual incentive compensation shall be 40 percent of the Executive's Base Salary (the "Target Annual Incentive Compensation"). Except as otherwise

provided herein, to earn incentive compensation, the Executive must be employed by the Company on the day such incentive compensation is paid.

(c) Expenses. The Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive during the Term in performing services hereunder, in accordance with the policies and procedures then in effect and established by the Company.

(d) Other Benefits. The Executive shall be eligible to participate in or receive benefits under the Company's employee benefit plans in effect from time to time, subject to the terms of such plans.

(e) Vacations. The Executive shall be entitled to paid vacation in accordance with the Company's then applicable policies and procedures. The Executive shall also be entitled to all paid holidays given by the Company.

3. Termination. The Executive's employment hereunder may be terminated without any breach of this Agreement under the following circumstances:

(a) Death. The Executive's employment hereunder shall terminate upon the Executive's death.

(b) Disability. The Company may terminate the Executive's employment if the Executive is disabled and unable to perform the essential functions of the Executive's then existing position or positions under this Agreement with or without reasonable accommodation for a period of 180 days (which need not be consecutive) in any 12-month period. If any question shall arise as to whether during any period the Executive is disabled so as to be unable to perform the essential functions of the Executive's then existing position or positions with or without reasonable accommodation, the Executive may, and at the request of the Company shall, submit to the Company a certification in reasonable detail by a physician selected by the Company to whom the Executive or the Executive's guardian has no reasonable objection as to whether the Executive is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Executive shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Executive shall fail to submit such certification, the Company's determination of such issue shall be binding on the Executive. Nothing in this Section 3(b) shall be construed to waive the Executive's rights, if any, under existing law including, without limitation, the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 *et seq*. and the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq*.

(c) Termination by Company for Cause. The Company may terminate the Executive's employment hereunder for Cause. For purposes of this Agreement, "Cause" shall mean: (i) conduct by the Executive constituting a material act of misconduct in connection with the performance of the Executive's duties, including, without limitation, misappropriation of funds or property of the Parent, the Company or any of its subsidiaries or affiliates other than the occasional, customary and de minimis use of Company property for personal purposes; (ii) the commission by the Executive of any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by the Executive that would reasonably be expected to result in material injury or reputational harm to the Parent, the Company or any of its subsidiaries or affiliates if the Executive were retained in the Executive's position; (iii) continued non-performance by the Executive of the Executive's duties hereunder (other than by reason of the Executive's physical or mental illness, incapacity or disability) which has continued for more than 30 days following written notice of such non-performance; (iv) a breach by the Executive of any of the provisions contained in Section 7 of this Agreement and any Restrictive Covenants; (v) a material violation by the Executive of the Parent's or the Company's written employment policies; or (vi) failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Parent or the Company to

cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

(d) Termination by Company without Cause. The Company may terminate the Executive's employment hereunder at any time without Cause. Any termination by the Company of the Executive's employment under this Agreement which does not constitute a termination for Cause under Section 3(c) and does not result from the death or disability of the Executive under Section 3(a) or (b) shall be deemed a termination without Cause.

(e) Termination by the Executive. The Executive may terminate the Executive's employment hereunder at any time for any reason, including but not limited to Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Executive has complied with the "Good Reason Process" (hereinafter defined) following the occurrence of any of the following events: (i) a material diminution in the Executive's responsibilities, authority or duties; (ii) a material diminution in the Executive's Base Salary except for across-the-board salary reductions based on the Parent's financial performance similarly affecting all or substantially all senior management employees of the Company; (iii) a material change in the geographic location at which the Executive provides services to the Company; or (iv) the material breach of this Agreement by the Parent or the Company. "Good Reason Process" shall mean that (i) the Executive reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Executive notifies the Company in writing of the first occurrence of the Good Reason condition within 60 days of the first occurrence of such condition; (iii) the Executive cooperates in good faith with the Company's efforts, for a period not less than 30 days following such notice (the "Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) the Executive terminates the Executive's employment within 60 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

(f) Notice of Termination. Except for termination as specified in Section 3(a), any termination of the Executive's employment by the Company or any such termination by the Executive shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon.

(g) Date of Termination. "Date of Termination" shall mean: (i) if the Executive's employment is terminated by the Executive's death, the date of death; (ii) if the Executive's employment is terminated on account of disability under Section 3(b) or by the Company for Cause under Section 3(c), the date on which Notice of Termination is given; (iii) if the Executive's employment is terminated by the Company under Section 3(d), the date on which a Notice of Termination is given or the date otherwise specified by the Company in the Notice of Termination; (iv) if the Executive's employment is terminated by the Executive under Section 3(e) other than for Good Reason, 30 days after the date on which a Notice of Termination is given, and (v) if the Executive's employment is terminated by the Executive under Section 3(e) for Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period. Notwithstanding the foregoing, in the event that the Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement. To the extent applicable, the Executive shall be deemed to have resigned from all officer and board member positions that the Executive holds with the Parent, the Company or any of its respective subsidiaries and affiliates upon the termination of the Executive's employment for any reason.

4. Compensation Upon Termination.

(a) Termination Generally. If the Executive's employment with the Company is terminated for any reason, the Company shall pay or provide to the Executive (or to the Executive's authorized representative or estate) (i) any Base Salary earned through the Date of Termination, unpaid expense reimbursements (subject to, and in accordance with, Section 2(c) of this Agreement) and unused vacation that accrued through the Date of Termination on or before the time required by law but in no event more than 30 days after the Executive's Date of Termination; and (ii) any vested benefits the Executive may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the "Accrued Benefit").

(b) Termination by the Company Without Cause or by the Executive for Good Reason. During the Term, if the Executive's employment is terminated by the Company without Cause as provided in Section 3(d), or the Executive terminates the Executive's employment for Good Reason as provided in Section 3(e), then the Company shall pay the Executive the Accrued Benefit. In addition, subject to the Executive signing a separation agreement containing, among other provisions, a general release of claims in favor of the Parent, the Company and all related persons and entities, confidentiality, return of property and non-disparagement and reaffirmation of Restrictive Covenants, in a form and manner satisfactory to the Company (the "Separation Agreement and Release") and the Separation Agreement and Release becoming irrevocable and fully effective, all within 60 days after the Date of Termination (or such shorter time period provided in the Separation Agreement and Release):

(i) the Company shall pay the Executive an amount equal to 1.25 times the sum of (A) the Executive's Base Salary plus (B) the Target Annual Incentive Compensation (the "Severance Amount");

(ii) the Company shall pay the Executive pro-rated annual incentive compensation for the year in which the Date of Termination occurs, pro-rated based on the Date of Termination (the "Pro-Rated Annual Incentive Compensation"); and

(iii) if the Executive was participating in the Company's group health plan immediately prior to the Date of Termination and elects COBRA health continuation, then the Company shall pay to the Executive a monthly cash payment for 15 months, the Executive's COBRA health continuation period or the Executive's retiree medical plan period under the Company's retiree medical plan, whichever ends earliest, in an amount equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company.

The amounts payable under Section 4(b)(i) and (iii) shall be paid out in substantially equal installments in accordance with the Company's payroll practice over 15 months commencing within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, the Severance Amount shall begin to be paid in the second calendar year by the last day of such 60-day period; provided, further, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. The Pro-Rated Annual Incentive Compensation shall be paid on the date the Company pays annual incentive compensation to its executives, and in any event no later than March 15 of the year following the year in which the Date of Termination occurs. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). Notwithstanding the foregoing, if the Executive breaches any of the Restrictive Covenants, all payments under Section 4(b) shall immediately cease.

5. Change in Control Payment. The provisions of this Section 5 set forth certain terms of an agreement reached between the Executive, the Parent and the Company regarding the Executive's rights and obligations upon the occurrence of a Change in Control of the Parent. These provisions are intended to assure and encourage in advance the Executive's continued attention and dedication to the Executive's assigned duties and the Executive's objectivity during the pendency and after the occurrence of any such event. These provisions shall apply in lieu of, and expressly supersede, the provisions of Section 4(b) regarding severance pay and benefits upon a termination of employment if such termination of employment occurs within 12 months after the occurrence of the first event constituting a Change in Control. These provisions shall terminate and be of no further force or effect beginning 12 months after the occurrence of a Change in Control.

(a) Change in Control. During the Term, if within 12 months after a Change in Control, the Executive's employment is terminated by the Company without Cause as provided in Section 3(d) or the Executive terminates the Executive's employment for Good Reason as provided in Section 3(e), then, subject to the signing of the Separation Agreement and Release by the Executive and the Separation Agreement and Release becoming irrevocable and fully effective, all within 60 days after the Date of Termination (or such shorter time period provided in the Separation Agreement and Release):

(i) the Company shall pay the Executive a lump sum in cash in an amount equal to 1.5 times the sum of (A) the Executive's current Base Salary (or the Executive's Base Salary in effect immediately prior to the Change in Control, if higher) plus (B) the Target Annual Incentive Compensation (the "Change in Control Payment");

(ii) the Company shall pay the Executive the Pro-Rated Annual Incentive Compensation;

(iii) notwithstanding anything to the contrary in any applicable option agreement or stock-based award agreement, (A) all time-based stock options and other time- based stock-based awards held by the Executive shall immediately accelerate and become fully exercisable or nonforfeitable as of the Date of Termination, and (B) the Company shall extend the exercise period with respect to the Executive's vested stock options for so long as such stock options remain outstanding until the earlier of (i) the original 10-year expiration date for such vested stock options as provided in the applicable equity documents, or (ii) the 24-month anniversary of the Date of Termination (or, if later, the date specified in the applicable equity documents) (the "Extended Exercise Period"), provided that the Executive is advised to consult the Executive's tax advisor with respect to the tax implications of the Extended Exercise Period;

(iv) if the Executive was participating in the Company's group health plan immediately prior to the Date of Termination and elects COBRA health continuation, then the Company shall pay to the Executive a monthly cash payment for 18 months, the Executive's COBRA health continuation period or the Executive's retiree medical plan period under the Company's retiree medical plan, whichever ends earliest, in an amount equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company; and

(v) the Company shall provide the Executive with outplacement services at a provider to be selected by the Company for up to three (3) months following the Date of Termination.

The amounts payable under Section 5(a)(i) and (iv) shall be paid or commence to be paid within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, such payment shall be paid or commence to be paid in the second calendar year by the last day of such 60-day period. The Pro-Rated Annual Incentive Compensation shall be paid on the date the Company pays annual incentive compensation to its executives, and in any event no later than March 15 of the year following the year in which the Date of Termination occurs.

(b) Additional Limitation.

(i) Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be $1.00 less than the amount at which the Executive becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Executive receiving a higher After Tax Amount (as defined below) than the Executive would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity- based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A- 24(b) or (c).

(ii) For purposes of this Section 5(b), the "After Tax Amount" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Executive as a result of the Executive's receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

(iii) The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 5(b)(i) shall be made by a nationally recognized accounting firm selected by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Executive. Any determination by the Accounting Firm shall be binding upon the Company and the Executive.

(c) Definitions. For purposes of this Section 5, the following terms shall have the following meanings:

"Change in Control" shall mean any of the following:

(i) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Parent, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Parent or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Parent representing 50 percent or more of the combined voting power of the Parent's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Parent); or

(ii) the date a majority of the members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; or

(iii) the consummation of (A) any consolidation or merger of the Parent where the stockholders of the Parent, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than 50 percent of the voting shares of the Parent issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), or (B) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Parent.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause (i) solely as the result of an acquisition of securities by the Parent which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of Voting Securities beneficially owned by any person to 50 percent or more of the combined voting power of all of the then outstanding Voting Securities; provided, however, that if any person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Parent) and immediately thereafter beneficially owns 50 percent or more of the combined voting power of all of the then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred for purposes of the foregoing clause (i).

6. Section 409A.

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of the Executive's separation from service within the meaning of Section 409A of the Code, the Company determines that the Executive is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement on account of the Executive's separation from service would be considered deferred compensation otherwise subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) six months and one day after the Executive's separation from service, or (B) the Executive's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

(b) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Executive during the

time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of
in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(c) To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Executive's termination of employment, then such payments or benefits shall be payable only upon the Executive's "separation from
service." The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section
1.409A-1(h).

(d) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party.

(e) The Company makes no representation or warranty and shall have no liability to the Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section.

7. Restrictive Covenants. The Restrictive Covenants between the Company and the Executive shall be in full force and effect and are incorporated by reference in this Agreement, including the agreement attached hereto as Exhibit A. The Executive acknowledges and agrees that the Executive would not be entitled to the payments, benefits and opportunities provided for in this Agreement absent agreeing to Exhibit A and, as such, this Agreement provides sufficient consideration to support the covenants therein. The Executive further acknowledges and agrees that all references to the "Company" in Exhibit A include the Parent and its respective subsidiaries, affiliates, successors or assigns.

8. Arbitration of Disputes. Any controversy or claim arising out of or relating to this Agreement or the breach thereof or otherwise arising out of the Executive's employment or the termination of that employment (including, without limitation, any claims of unlawful employment discrimination whether based on age or otherwise) shall, to the fullest extent permitted by law, be settled by arbitration in any forum and form agreed upon by the parties or, in the absence of such an agreement, under the auspices of the American Arbitration Association ("AAA") in Chicago, Illinois in accordance with the Employment Dispute Resolution Rules of the AAA, including, but not limited to, the rules and procedures applicable to the selection of arbitrators. In the event that any person or entity other than the Executive or the Company may be a party with regard to any such controversy or claim, such controversy or claim shall be submitted to arbitration subject to such other person or entity's agreement. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This Section 8 shall be specifically enforceable. Notwithstanding the foregoing, this Section 8 shall not preclude either party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or a preliminary injunction in circumstances in which such relief is

appropriate; provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Section 8.

9. Consent to Jurisdiction. To the extent that any court action is permitted consistent with or to enforce Section 8 of this Agreement, the parties hereby consent to the jurisdiction of the Superior Court of the State of Illinois and the United States District Court for the Northern
District of Illinois. Accordingly, with respect to any such court action, the Executive (a) submits to the personal jurisdiction of such courts; (b) consents to service of process; and (c) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

10. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties concerning such subject matter, provided that, and for the avoidance of doubt, any Restrictive Covenant and the Executive's applicable equity award agreements shall be in full force and effect in accordance with their terms.

11. Withholding. All payments made by the Company to the Executive under this Agreement shall be net of any tax or other amounts required to be withheld by the Company under applicable law.

12. Successor to the Executive. This Agreement shall inure to the benefit of and be enforceable by the Executive's personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Executive's death after the Executive's termination of employment but prior to the completion by the Company of all payments due to the Executive under this Agreement, the Company shall continue such payments to the Executive's beneficiary designated in writing to the Company prior to the Executive's death (or to the Executive's estate, if the Executive fails to make such designation).

13. Enforceability. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Survival. The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of the Executive's employment to the extent necessary to effectuate the terms contained herein.

15. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

16. Notices. Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the Executive at the last address the Executive has filed in writing with the Company or, in the case of the Parent and the Company, at the Company's main offices, attention of the Board.

17. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Executive and by a duly authorized representative of the Parent.

18. Governing Law. This is a Delaware contract and shall be construed under and be governed in all respects by the laws of the State of Delaware, without giving effect to the conflict of laws principles thereof.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

20. Successor to Company. The Parent shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Parent expressly to assume and agree to perform this Agreement to the same extent that the Parent and the Company would be required to perform it if no succession had taken place. Failure of the Parent to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a material breach of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year first above written.

XERIS BIOPHARMA HOLDINGS, INC.

By: /s/ Paul R. Edick

Its: Chairman & Chief Executive Officer

XERIS PHARMACEUTICALS, INC.

By: /s/ Paul R. Edick

Its: Chairman & Chief Executive Officer

EXECUTIVE

/s/ Beth P. Hecht
Beth P. Hecht

CREDIT AGREEMENT AND GUARANTY

dated as of

March 8, 2022

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. $150,000,000

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SCHEDULES AND EXHIBITS

CREDIT AGREEMENT AND GUARANTY

CREDIT AGREEMENT AND GUARANTY, dated as of March 8, 2022 (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, the Borrower has requested that the Lenders provide 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 Loans to be available on the Closing Date (the "***Initial Loan***") and up to $50,000,000 in aggregate principal amount of Loans to be available after the Closing Date but prior to March 8, 2023, in each case, subject to the terms and conditions set forth herein, including the applicable terms and conditions set forth in **Section 6** hereof; and

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

NOW, THEREFORE, the parties hereto agree as follows:

Section 1
DEFINITIONS

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

"***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) nine percent (9.0%) per annum generally, or (ii) with respect to Obligations for which the Reference Rate is the Wall Street Journal Prime Rate, eight

percent (8.0%) 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 the context may require, the borrowing of the Initial Loan on the Closing Date or the borrowing of a Delayed Draw Loan on any Delayed Draw Borrowing Date.

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

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

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York, New York, 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 as defined in the Existing Convertible Notes or any similar term in 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.

*"**Closing Date**"* means March 8, 2022.

"***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 Closing Date equal $150,000,000.

"***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 Adjusted 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 Obligors.

"***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 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)**.

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

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

"***Delayed Draw Loan***" each Loan made after the Closing Date pursuant to **Section 2.01(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 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 Date 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 (5.0%), and (B) after the third anniversary of the Closing Date and on or prior to the fourth anniversary of the Closing Date, three percent (3.0%), and (iii) after the fourth anniversary of the Closing 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 Closing Date, and in each case, however classified or designated and whether voting or non-voting.

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

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

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

"***ERISA Event***" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) 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 could reasonably be expected to give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such Plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any Lien (or the fulfillment of the conditions for the imposition of any Lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or Title IV of ERISA, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor; or (xix) any Foreign Benefit Event.

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

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

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

"*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 $100,000 individually at any time or $500,000 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 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. National Association, as trustee, and the Second Supplemental Indenture, dated October 5, 2021, by and among the Borrower, Parent and U.S. National Association, as trustee, as amended, supplemented or otherwise modified from time to time in accordance with this Agreement.

"***FATCA***" means Sections 1471 through 1474 of the Code, as of the Closing 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 depositary institutions (as determined in such manner as the Federal Reserve Bank of New York sets forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate and (ii) zero percent (0%).

"***Fee Letter***" means the Fee Letter, dated as of the Closing 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 could 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%) of the consolidated assets or revenue, as applicable, of Parent and its consolidated Subsidiaries. The parties hereto agree that, as of the Closing 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) [reserved];

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

(v) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable (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);

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

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

(viii) all Capital Lease Obligations of such Person;

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

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

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

(xii) [reserved];

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

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

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

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

"***Initial Loan***" has the meaning set forth in the first recital hereto.

"***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 as of the second Business Day immediately preceding the first day of such Interest Period and (y) either (A) one percent (1.00%) per annum generally or (B) with respect to Obligations for which the Reference Rate is the Wall Street Journal Prime Rate, 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 Required 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 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 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, as the context may require, the Initial Loan or any Delayed Draw Loan, 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 the Warrant Certificates 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 (i) each Contract listed on **Schedule 7.14**, (ii) each Critical Supplier Contract, and (iii) any other Contract to which Parent or any of its Subsidiaries is a

party or a beneficiary from time to time, or to which any assets or properties of Parent or any of its Subsidiaries are bound the absence or termination of which could reasonably be expected to result in a Material Adverse Effect, in each case, as amended, supplemented or otherwise modified from time to time.

"***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 $1,500,000 (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 could 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 $10,000,000, 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 Regulatory Event***" means an Adverse Regulatory Event that, individually or when taken together with each other Adverse Regulatory Event that has occurred since the Closing Date, has resulted in or could reasonably be expected to result in a Material Adverse Effect.

"***Maturity Date***" means March 8, 2027 (the "***Scheduled Maturity Date***"); provided that 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 Convertible Notes are outstanding; or

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

(x) the maturity date therefor has been extended to a date not earlier than September 4, 2027; or

(y) if the maturity date for any such Existing 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 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 Convertible Notes as of their respective maturity dates as in effect on January 15, 2025; provided that, any term or provision hereof to the contrary notwithstanding, no such Subject Cash other than Non-Balance Sheet Cash Proceeds shall be available or permitted to be used for the redemption of any Relevant Existing Convertible Notes 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**.

"***Maximum Subject Cash Amount***" has the meaning set forth in the definition of "Subject Cash".

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

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

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

"***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 Closing Date and prior to January 15, 2025, in an aggregate amount not to exceed $47,175,000, which net cash proceeds have been deposited into a Controlled Account as specified in **clause (ii)(y)** of the definition of Maturity Date for use as provided in **Section 8.19**.

"***Non-Call Period***" means the period from the Closing Date up to and including the second anniversary of the Closing 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 all Warrant Obligations) 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 Closing 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.

"***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 could 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 Closing 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 Closing 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 $25,000,000 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 $1,500,000, 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 Obligors;

(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 $1,500,000 in the aggregate since the Closing 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 Closing 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 4, 2027 (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 Licenses***" means (A) licenses of over-the-counter software that is commercially available to the public and are used by Parent or any of its Subsidiaries in the ordinary course of business, and (B) non-exclusive and exclusive licenses for the use of the Intellectual Property of Parent or any of its Subsidiaries entered into in the ordinary course of business (other than any Prohibited Outbound Licenses); provided, that, with respect to each such license described in clause (B), (i) it has been entered into on an arm's-length basis, on

commercially reasonable terms and in the ordinary course of business, (ii) subject to the terms of any non-disturbance or similar agreements, to the extent such Intellectual Property constitutes Collateral, does not prevent or impair the ability of the Agent or the Lenders from fully exercising their 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, (iii) in the case of any exclusive license, (x) Parent shall provide ten (10) days' prior written notice and a reasonably detailed summary of the terms of the proposed license to the Agent and shall deliver to the Agent copies of the final executed licensing documents in connection with the exclusive license promptly upon the effectiveness thereof, (y) such license shall not result in a legal transfer of title of the licensed property, and (z) such license is not perpetual; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Parent or any of its Subsidiaries are paid to a Controlled Account.

"***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 Closing 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 could 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.

"***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 Outbound License***" means any outbound license of Material Intellectual Property to a Person other than a Subsidiary of Parent for Product Commercialization and Development Activities in the United States.

"***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 Adjusted Term SOFR; provided that if Three-Month Term Adjusted 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 Adjusted 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)**.

"***Refinanced Debt***" means Indebtedness of the Borrower and Parent outstanding pursuant to that certain Amended and Restated Loan and Security Agreement, dated as of September 10, 2019, among the Borrower, Parent, the lenders party thereto and Oxford Finance, LLC as collateral agent for such lenders, as amended or otherwise modified from time to time.

"***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 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.

"***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 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. ko*nkurs*), 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.

"***Specialty Pharmacy Agreement***" means any contract of the Obligors with PANTHERx (or its Affiliates) or any other replacement pharmacy company thereof that provides reasonably comparable products to the Obligors.

"***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 an amount of cash sufficient to redeem and discharge all Relevant Existing Convertible Notes in cash and in full on their respective maturity dates as in effect on January 15, 2025 (the "***Maximum Subject Cash Amount***"); provided that, except for not more than $15,000,000 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 Closing 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 Closing 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 Adjusted Term SOFR***" means, for purposes of any calculation, the rate per annum equal to (i) Three-Month Term SOFR for such calculation *plus* (ii) 0.26161%; provided that if Three-Month Adjusted Term SOFR shall ever be less than the 1.00%, then Three-Month Adjusted Term SOFR shall be deemed to be 1.00%.

"***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.

"***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.

"***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, the repayment of the Refinanced Debt, 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.

"***Warrant Certificate***" means each Warrant Certificate in substantially the form of **Exhibit J** hereto, to be issued and delivered by Parent pursuant to **Section 6.01(k)** (as a condition precedent to the Borrowing of the Initial Loan), as amended or otherwise modified pursuant to the terms thereof.

"***Warrant Obligations***" means all Obligations of Parent arising out of, under or in connection with the Warrant Certificate.

"***White List Agent***" means those Persons disclosed in writing by the Agent to the Borrower prior to the Closing 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 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 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 may be updated by written delivery to the Agent pursuant to **Section 6.02(b)** in connection with a Borrowing of a Delayed Draw 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 Required Lenders.

Section 2
THE COMMITMENTS AND THE LOANS

1.01 Loans.

(a) On the terms and subject to the conditions of this Agreement, each Lender agrees to make the Initial Loan to the Borrower, in a single Borrowing on the Closing Date, in an aggregate principal amount for all Lenders of $100,000,000 in immediately available funds.

(b) On the terms and subject to the conditions of this Agreement, each Lender agrees to make, on a Delayed Draw Borrowing Date occurring after the Closing Date, up to three (3) Borrowings of Delayed Draw Loans to the Borrower, each in a principal amount not to be less than $10,000,000 for any such Borrowing and in an aggregate principal amount not to exceed $50,000,000 for all such Borrowings, in each case, in immediately available funds.

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

(d) 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.

1.02 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 Closing 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.

1.03 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**.

1.04 Use of Proceeds. The Borrower shall use the proceeds of the Loans for purposes of (i) the repayment in full of the Refinanced Debt on the Closing Date, (ii) working capital and general corporate purposes, and (iii) without duplication, the payment of fees and expenses associated with this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

Section 3
PAYMENTS OF PRINCIPAL AND INTEREST

1.01 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 Initial Loan and any outstanding Delayed Draw 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.

1.02 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 Closing 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.

1.03 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 Closing 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.

1.04 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.

1.01 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.

1.02 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.

1.03 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.

1.01 Additional Costs.

(a) **Changes in Law Generally**. If, on or after the Closing 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 Closing 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 Closing 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 Closing 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 Closing 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).

1.02 Illegality. Notwithstanding any other provision of this Agreement, if, on or after the Closing 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)**.

1.03 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 Closing 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.

1.04 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

1.01 Conditions to the Borrowing of the Initial Loan. The obligation of the Lenders to make the Initial Loan on the Closing Date shall be subject to the execution and delivery of this Agreement by the parties hereto, the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, the delivery of a funds flow memorandum summarizing, in reasonable detail, the use of proceeds of Initial 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 Closing 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 Closing Date, for each such Person (other than an Irish Obligor) and

(ii) a certificate (each an "***Authority Certificate***"), dated as of the Closing 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 Closing Date, duly executed and delivered by a Responsible Officer of Parent and the Borrower, which is true and correct as of the Closing 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) **Closing Date Certificate**. The following statements shall be true and correct, and the Agent shall have received a certificate, dated as of the Closing 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 Closing Date, (x) the representations and warranties set forth in each Loan Document that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct; 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 could reasonably be expected to result from the Borrowing of the Initial Loan, or the consummation of any Transactions contemplated to occur on the Closing Date, and (ii) all of the conditions set forth in this **Section 6.01** have been satisfied (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, 2020; and

(ii) unaudited consolidated balance sheets of Parent and its Subsidiaries for each fiscal quarter ended after December 31, 2020, 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 Closing 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 Closing Date, in form and substance reasonably satisfactory to the Agent.

(j) **Security Documents**. The Agent shall have received executed counterparts of all Security Documents of all Obligors to be entered into on the Closing Date, each dated as of the Closing Date, duly executed and delivered by each such Obligor, together with:

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

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

(iii) all Short-Form IP Security Agreements, Real Property Security Documents and any other agreement, document or instrument required to be provided under any Security Document on the Closing Date, duly executed and delivered by the applicable Obligors;

(iv) share certificates in respect of the mortgaged shares the subject of each Irish Share Charge and each Irish Debenture, together with undated share transfer form for each

such certificate executed in blank by a duly authorised officer of the pledgor thereof and a certified copy of the share registers of each of the Irish Obligors; and

(v) a copy of the updated share register (Sw. *aktiebok*) of Cortendo and, within the time period required by the relevant Security Document, the original share certificate (Sw. *aktiebrev*) representing all shares in Cortendo, duly endorsed in blank.

(k) **Warrant Certificate**. The applicable Lenders (or their nominated Affiliates) shall have received an executed counterpart of the Warrant Certificate, exercisable in the aggregate into $3,000,000 of shares of Parent's common stock at the strike price set forth therein, duly executed and delivered by Parent.

(l) **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 Initial 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 Closing Date pursuant to documentation satisfactory to the Agent.

(m) **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 with Silicon Valley Bank are Controlled Accounts.

(n) **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.

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

(p) **Opinions of Counsel**. The Agent shall have received one or more legal opinions, dated as of the Closing 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

(q) **Payoff of Refinanced Debt**. The Refinanced Debt, together with all accrued and unpaid interest and related fees, costs and expenses, shall be, substantially contemporaneously with the funding of the Initial Loans, paid in full, and the Agent shall have received executed payoff letters, in form and substance reasonably satisfactory to the Agent, providing for such payment in full (and irrevocable termination) of the Refinanced Debt and satisfactory arrangements shall have been made for the termination of all loan documents evidencing such Refinanced Debt and all Liens granted in connection therewith. On the Closing Date, after giving effect to the Transactions, Parent and its Subsidiaries shall not have any Indebtedness other than the Obligations and other Permitted Indebtedness.

(r) **Material Adverse Change**. Since December 31, 2020, no Material Adverse Change shall have occurred.

(s) **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.

(t) **All Other Loan Documents**. The Agent shall have received all other Loan Documents to be entered into on the Closing 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.

(u) **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 Initial 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.

(v) **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 Obligors, the consummation by the Obligors of their obligations in respect of Transactions or the operation and conduct of the Obligors' business and ownership of their properties (including their Product Commercialization and Development Activities).

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

1.02 Conditions to the Borrowing of the Delayed Draw Loans. The obligation of each Lender to make a Delayed Draw Loan on any Delayed Draw Borrowing Date shall be subject to the prior making of the Initial Loan on the Closing 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 Delayed Draw Loans, 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) **Secretary's Certificate, Etc.** Unless Parent and the Borrower have certified to the Agent and the Lenders that the Authority Certificates delivered on the Closing Date pursuant to **Sections 6.01(a)** and **(b)** remain in effect and may be relied upon by the Agent and the Lenders, which certification may be in the Borrowing Notice for such Delayed Draw Loan, the Agent shall have received from each Obligor party to a Loan Document on the applicable Delayed Draw Borrowing Date:

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

(ii) a certificate, dated as of such Delayed Draw Borrowing 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 (or a statement as to no change or loss of force or effect since the Closing Date);

(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 (or a statement as to no change or loss of force or effect since the Closing Date); and

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

which certificates shall be in form and substance reasonably satisfactory to the 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) **Delayed Draw Borrowing Date Certificate**. The following statements shall be true and correct, and the Agent shall have received a certificate, dated as of the applicable Delayed Draw Borrowing Date (the "***Delayed Draw 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 such Delayed Draw Loans, (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 could reasonably be expected to result from the Borrowing of such Delayed Draw Loans or the consummation of any Transactions contemplated to occur on such Delayed Draw Borrowing Date, (iv) all of the conditions set forth in this **Section 6.02** have been satisfied (except to the extent 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, and (v) 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 such Delayed Draw 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 Closing Date" shall be deemed to be references to the applicable "Delayed Draw 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 Delayed Draw Borrowing Date. All documents and agreements required to be appended to the certificate delivered pursuant to this **Section 6.02(b)**, if any, shall have been, as applicable, executed and delivered by the requisite parties, and shall, as applicable, be in full force and effect.

(c) **Information Certificate.** The Agent shall have received a fully completed Information Certificate, in form reasonably satisfactory to the Agent, dated as of the applicable Delayed Draw Borrowing Date, duly executed and delivered by a Responsible Officer of Parent and the Borrower, which is true and correct as of the applicable Delayed Draw Borrowing Date; provided that Parent and the Borrower may supplement the Information Certificate delivered on the Closing Date in order for such certification to be true and correct as of such date. All documents and agreements required to be appended to the Information Certificate delivered pursuant to this **Section 6.02(c)**, if any, shall be in form and substance reasonably satisfactory to the Agent, shall have been executed and delivered by the requisite parties, and shall be in full force and effect.

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

(e) **Delayed Draw Borrowing Date**. Each Borrowing Date shall have occurred on or before March 8, 2023.

(f) **Fees, Expenses, Etc.** The Agent shall have received for its account and the account of each Lender, all fees accrued through the applicable Borrowing Date hereunder and under the Fee Letter, all fees payable in connection with the borrowing of such Delayed Draw Term Loan and all other fees, 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).

Section 7
REPRESENTATIONS AND WARRANTIES

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

1.01 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.

1.02 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.

1.03 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, could 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.

1.04 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 Closing 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, 2020, there has been no Material Adverse Change.

1.05 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).

(c) **Intellectual Property.**

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

(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, and 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 Material 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;

(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, 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.

1.06 No Actions or Proceedings.

(a) **Litigation**. 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 material 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 material 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. Except as set forth on **Schedule 7.06(c)**, 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.

1.07 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, except (other than with respect to Material Intellectual Property, as covered in **Section 7.05(c)**) 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 material compliance with all applicable Healthcare Laws and Healthcare Permits, 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.

1.08 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.

1.09 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).

1.10 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.

1.11 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.

1.12 Equity Holders, Subsidiaries and Other Investments.

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

(b) 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. **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.

1.13 [Reserved].

1.14 Material Agreements. Set forth on **Schedule 7.14** is a complete and correct list of (i) each Material Agreement and (ii) each Contract creating or evidencing any Material Indebtedness. Accurate and complete copies of each Material Agreement disclosed on such schedule have been made available to the Agent; provided, however, that to the extent applicable confidentiality obligations prohibit the Borrower from sharing all or a portion of such Contract, Parent shall provide a reasonably detailed summary of such Material Agreement. None of the Obligors nor any of their Subsidiaries is in material default under any such Material Agreement or its primary Specialty Pharmacy Agreement, and none of the Obligors has knowledge of any material default by any counterparty to any such Contract and there are no pending or, to any Obligor's knowledge, threatened (in writing) material 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. None of the Obligors nor any of their Subsidiaries has received any information from, or Claim by, any Person that any Material Agreement or its primary Specialty Pharmacy Agreement is breached or is in default. There are no outstanding (and none of the Obligors has knowledge of), any threatened (in writing) material disputes or disagreements with respect to any Material Agreement or any primary Specialty Pharmacy Agreement. Except as otherwise disclosed on **Schedule 7.14**, all such Material Agreements and all primary Specialty Pharmacy Agreements are in full force and effect without material modification from the form in which the same were disclosed to the Lenders or other modifications not expressly prohibited by **Section 9.12**.

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

1.16 Real Property. Except as set forth on **Schedule 7.16**, none of the Obligors nor any of their Subsidiaries owns or leases (as tenant thereof) (excluding any co-working arrangements) any real property.

1.17 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, (x) each Benefit Plan and Foreign Pension Plan is in compliance with all applicable provisions of ERISA, the Code or other applicable Law, (y) there are no existing or pending or, to the knowledge of 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 could reasonably be expected to have an obligation or any liability or Claim and (z) 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 Obligors, nor any of their Subsidiaries nor any of their ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. Except as would 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.

1.18 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.

1.19 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) 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. All such Regulatory Approvals are (i) 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, (ii) 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 (iii) valid, enforceable, in good standing, and in full force and effect with the applicable Regulatory Authority in all respects. All required notices, registrations, listing, supplemental applications or notification reports (including field alerts or other reports of adverse experiences) and other required filings have been filed with the appropriate 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.

1.20 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 Closing Date in violation of **Section 9.10**.

1.21 Sanctions. None of the Obligors 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.

1.22 Anti-Corruption. None of the Obligors 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.

1.23 [Reserved].

1.24 Royalties and Other Payments. Except as set forth on **Schedule 7.24**, none of the Obligors 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.

1.25 Non-Competes. None of the Obligors 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.

1.26 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 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:

1.01 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 Obligors' 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 believed 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.

1.02 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 $1,500,000 (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 could 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 or primary Specialty Pharmacy 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 or primary Specialty Pharmacy Agreement that could give rise to an early termination thereof (and a copy thereof); (iii) the entering into of any new Material Agreement or primary Specialty Pharmacy Agreement by Parent or any of its Subsidiaries (and a copy thereof); or (iv) any material amendment to a Material Agreement or a primary Specialty Pharmacy Agreement (and a copy thereof).

(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 could 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 Closing 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 $1,500,000.

(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 could 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.

1.03 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**.

1.04 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.

1.05 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."

1.06 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.

1.07 Compliance with Laws and Other Obligations. Each Obligor shall, and shall cause each of its Subsidiaries to, (i) comply in all material 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 material respects with, and

perform in all material respects all terms of outstanding Material Agreements and primary Specialty Pharmacy Agreements and all Healthcare Permits.

1.08 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.

1.09 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).

1.10 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.

1.11 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.

1.12 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 Closing 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 reasonably 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(l)** in respect of real property with a value in excess of $1,500,000, 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.

1.13 [Reserved].

1.14 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).

1.15 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, primary Specialty Pharmacy 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, primary Specialty Pharmacy 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.

1.16 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.

1.17 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.

1.18 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.

1.19 Existing Convertibles Notes; Subject Cash. Subject to the proviso set forth in **clause (ii)(y)** of the definition of "Maturity Date", to the extent any Relevant Existing Convertible Notes remain outstanding with their respective maturity dates as in effect on January 15, 2025, the Borrower shall redeem such Relevant Existing Convertible Notes in full and for cash on such maturity date using Subject Cash. No Obligor shall use Non-Balance Sheet Cash Proceeds for any purpose other than the redemption in full in cash of the Relevant Existing Convertible Notes on their respective maturity dates as in effect on January 15, 2025.

1.20 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:

1.01 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 Closing Date (other than the Existing Convertible Notes) 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) 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; provided that 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 $1,500,000 (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 $1,500,000 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, depositary 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 $47,175,000, 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 $47,175,000 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 $500,000 in the aggregate;

(p) Indebtedness under any letters of credit in an aggregate face amount not to exceed $2,000,000;

(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 $1,000,000 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 $1,500,000 in the aggregate at any time outstanding;

(t) Permitted Refinancings of Indebtedness otherwise permitted pursuant to this **Section 9.1** (other than **Section 9.1(a)**, **(l) (t)** and **(u)**); 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)** or **(r)** above).

1.02 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 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 Closing 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 Closing 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 Obligors or any of their Subsidiaries;

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to applicable Law; (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 Obligors 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) Liens consisting of Permitted Licenses;

(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; and

(s) Liens not otherwise permitted hereunder securing Indebtedness permitted pursuant to **Section 9.01(s)**.

Any term or provision of this Agreement to the contrary notwithstanding no Lien otherwise permitted under any of the foregoing **clauses (b)** through **(s)** (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.

1.03 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 could 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) the merger between Cortendo and any other Obligor or the solvent liquidation or dissolution of Cortendo; provided that the Obligors shall ensure that the Agent has at all times a perfected Lien on all Equity Interests in Strongbridge Dublin Limited;

(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).

1.04 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 Closing Date by such Persons or a similar, corollary, ancillary, incidental, complementary or related line of business, or a reasonable extension, development or expansion thereof.

1.05 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 Closing 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 $1,500,000 (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 $1,500,000 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 and (ii) Cortendo not to exceed $100,000 in the aggregate 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 (i) and (ii) together shall not exceed $250,000 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 $1,500,000;

(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 $250,000;

(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 $500,000; and

(r) So long as no Event of Default has occurred and is continuing or could reasonably be expected to result therefrom, Investments not otherwise permitted hereunder in an aggregate amount not to exceed $1,500,000 at any time outstanding.

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).

1.06 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:

(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 could reasonably be expected to occur or result therefrom;

(b) dividends paid by any Subsidiary of any Obligor 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)**);

(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 $1,500,000 per fiscal year so long as no Event of Default has occurred and is continuing or could 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 the Warrant Obligations or its obligations under any other 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) (x) redemptions, repurchases, exchanges or refinancings of Existing Convertible Notes (in whole or in part); provided that (i) each such redemption, repurchase, exchange or refinancing is made only with Subject Cash, or proceeds of one or more issuances of Qualified Equity Interests of Parent or Permitted Convertible Indebtedness, or a combination thereof, (ii) 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 (iii) both immediately before and after giving effect to

such redemption, repurchase, exchange or refinancing, the Obligors are and will be in compliance with the financial covenants set forth in **Section 10**; (y) payments of interest in respect of the Existing Convertible Notes in accordance with their terms in effect on the Closing 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 (z) 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 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 $25,000 per fiscal year;

(i) Parent may effect a conversion 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 $1,500,000 since the date of this Agreement so long as no Event of Default has occurred and is continuing or could 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).

1.07 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, 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.

1.08 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 Closing 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.

1.09 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 could 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 $250,000 in the aggregate.

1.10 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.

1.11 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**.

1.12 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) (x) take or omit to take any action that results in the termination of, or permits any other Person to terminate, any Material Agreement or Material Intellectual Property, (y) 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 (z) cease to have any primary Specialty Pharmacy Agreement in place; 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".

1.13 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.

1.14 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.

1.15 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.

1.16 [Reserved].

1.17 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).

1.18 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 $1,000,000 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.** The Obligors shall not, and shall not permit any of their Subsidiaries to, enter into or become or remain bound by any outbound license, including any collaboration or development agreement, of Intellectual Property of any Obligor or any of its Subsidiaries other than Permitted Licenses.

1.19 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

1.01 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**.

1.02 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:

Fiscal Quarter Ending	Revenue
December 31, 2022	$80,000,000
March 31, 2023	$85,000,000
June 30, 2023	$90,000,000
September 30, 2023	$95,000,000
December 31, 2023	$100,000,000
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

1.01 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 or other Indebtedness in an aggregate principal amount in excess of $1,500,000, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness.

(g) **Other Defaults on Other Indebtedness**. (i) Any material breach of, or "event of default" or similar event under, any Contract governing any Material Indebtedness shall occur and such breach or "event of default" or similar event shall continue unremedied, uncured or unwaived after the expiration of any cure period thereunder, (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders 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 (i) the conversion of Existing Convertible Indebtedness or Permitted Convertible Indebtedness in accordance with its terms, (ii) the redemption of the Existing Convertible Indebtedness or any Permitted Convertible Indebtedness permitted to be redeemed by, and in accordance with, this Agreement) or (iii) 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 $500,000; *provided* that this **clauses (i)** and **(ii)** of 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 (w) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law now or hereafter in effect, (x) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in **clause (i)** above, (y) 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, (z) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (aa) make a general assignment for the benefit of creditors or (bb) 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 $1,500,000 (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, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment.

(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, could reasonably be expected to result in liability of Parent and its Subsidiaries in an aggregate amount exceeding $1,500,000 in the aggregate since the Closing 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).

1.02 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.

1.03 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

1.01 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)**.

1.02 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.

1.03 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.

1.04 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.

1.05 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.

1.06 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.

1.07 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.

1.08 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.

1.09 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.

1.10 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 (w) termination of the Commitments, (x) 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, (y) 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 (z) 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**.

1.11 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

1.01 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.

1.02 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.

1.03 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.

1.04 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.

1.05 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**.

1.06 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.

1.07 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.

1.08 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.

1.09 Irish Guarantee Limitations. Notwithstanding any other provision of the Loan Documents, (i) 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 and (ii) the obligations guaranteed by the Irish Obligors shall exclude the Warrant Obligations**.**

1.10 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

1.01 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.

1.02 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.

1.03 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 Closing 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.

1.04 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.

1.05 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.

1.06 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.

1.07 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.

1.08 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.

1.09 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.

1.10 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.

1.11 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.

1.12 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.

1.13 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.

1.14 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.

1.15 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.

1.16 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.

1.17 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.

1.18 Early Prepayment Fee. If the Loans are accelerated or otherwise become due prior to their 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 Final 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.

1.19 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.

1.20 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.

1.21 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.

[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 _____
Name:
Title:

PARENT:

XERIS BIOPHARMA HOLDINGS, INC.

By _____
Name:
Title:

Address for Notices:

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

With a copy to:

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

SUBSIDIARY GUARANTORS:

STRONGBRIDGE BIOPHARMA LIMITED

By _____
Name:
Title:

STRONGBRIDGE DUBLIN LIMITED

By _____
Name:
Title:

CORTENDO AB

By _____
Name:
Title:

Address for Notices:
[_____]
[_____]
Attn: [_____]
Tel.: [_____]
Fax: [_____]
Email: [_____]

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

AGENT:

HAYFIN SERVICES LLP

By _____
Name:
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@mofo.com

LENDERS:

HAYFIN SOF III LUXCO S.À R.L.

By _____
Name:
Title:

HAYFIN HEALTHCARE OPPORTUNITIES LUXCO S.À R.L.

By _____
Name:
Title:

HAYFIN BIG CYPRESS LUXCO S.À R.L.

By _____
Name:
Title:

HAYFIN CHIEF LUXCO S.À R.L.

By _____
Name:
Title:

HAYFIN HOSTPLUS LUXCO S.À R.L.

By _____
Name:
Title:

HAYFIN OPAL 2020 (A) LP, acting by its manager Hayfin Management Limited

By _____
Name:
Title:

HAYFIN OPAL 2020 (B) LP, acting by its manager Hayfin Management Limited

By _____
Name:
Title:

HAYFIN HAMILTON LUXCO S.À R.L.

By _____
Name:
Title:

SUNHAY LUXCO S.À R.L.

By _____
Name:
Title:

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@mofo.com

Schedule 1
to Credit Agreement

COMMITMENTS

INITIAL LOAN

Lender	**Commitment**	**Proportionate Share**
Hayfin Healthcare Opportunities LuxCo S.a.r.l.	$6,666,666.67	6.6667%
Hayfin Chief LuxCo Sarl	$9,151,305.04	9.1513%
Hayfin Opal 2020 (A) LP	$7,318,265.13	7.3183%
Hayfin Opal 2020 (B) LP	$5,754,739.93	5.7547%
Hayfin Hamilton Luxco Sarl	$16,228,686.57	16.2287%
SunHay LuxCo Sarl	$9,650,074.07	9.6501%
Hayfin SOF III LuxCo Sarl	$34,654,112.18	34.6541%
Hayfn Hostplus LuxCo Sarl	$7,444,000.00	7.4440%
Hayfin Big Cypress LuxCo Sarl	$3,132,150.41	3.1322%
TOTAL	**$100,000,000**	**100%**

DELAYED DRAW LOANS

Lender	**Commitment**	**Proportionate Share**
Hayfin Healthcare Opportunities LuxCo S.a.r.l.	$3,333,333.33	6.6667%
Hayfin Chief LuxCo Sarl	$4,575,652.52	9.1513%
Hayfin Opal 2020 (A) LP	$3,659,132.57	7.3183%
Hayfin Opal 2020 (B) LP	$2,877,369.96	5.7547%
Hayfin Hamilton Luxco Sarl	$8,114,343.29	16.2287%
SunHay LuxCo Sarl	$4,825,037.03	9.6501%
Hayfin SOF III LuxCo Sarl	$17,327,056.09	34.6541%
Hayfn Hostplus LuxCo Sarl	$3,722,000.00	7.4440%
Hayfin Big Cypress LuxCo Sarl	$1,566,075.21	3.1322%
TOTAL	**$50,000,000**	**100%**

Exhibit 31.1

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 11, 2022

By: /s/ Paul R. Edick
Paul R. Edick
Chairman and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

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 11, 2022

By: /s/ Steven M. Pieper
Steven M. Pieper
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

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, 2022 (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 11, 2022

/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)